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Statute of limitations on Rape Cases in Nepal: Whether the Statute of Limitations be extended or eliminated?

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Abstract

In the context of Nepal, the statute of limitations on rape cases is a complicated issue as it can both help foster accountability and stand in the way of justice at the same time. This article aims to explore the various barriers to justice for victims of rape and offer comprehensive suggestions to improve their access to justice. Inadvertently protecting offenders, Nepal's limited reporting window exacerbates the difficulties faced by survivors, adding to their stigma and practical obstacles. International bodies' criticism highlights how urgent reform is, and this is supported by activist movements and domestic legislative efforts. However, simply repealing the statute of limitations is not enough. To break down systemic barriers and promote accountability, a comprehensive strategy that includes legal reforms, awareness campaigns, and survivor-centric policies is needed.

1. Introduction

Rape is a serious issue of global concern.[3] It is a criminal act that has plagued societies throughout history, causing immeasurable harm to victims and communities. The act of non-consensual sexual intercourse has been condemned by moral codes, religious teachings, and legal systems across cultures[4]. Physically forced or otherwise coerced penetration - even if mild - of the vulva or anus using a penis, other body parts, or an instrument is the definition of rape given by the World Health Organization[5]. It does not, however, fully convey the complexity and breadth of rape as a crime and a human rights violation. The majority of modern laws, dispersed over many jurisdictions, come to the

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[3] Rape Statistics by Country 2024, https://www.datapandas.org/ranking/rape-statistics-by-country (last visited Sep 7, 2024).

[4] Columbia University, Center for American Studies, *History of Sexual Abuse and Harrassment | Freedom and Citizenship*, https://freedomandcitizenship.columbia.edu/gender-equality-history-2021 (last visited Apr 15, 2024).

[5] World Report on Violence and Health, (World Health Organization ed., 2002), https://iris.who.int/bitstream/handle/10665/42495/9241545615_eng.pdf?sequence=1, (last visited July 1, 2024).

conclusion that rape, in general, include sexual activity that is both unwelcome and involves the use of force. The parallels stop there, though, as there is disagreement about what qualifies as "penetration," "force," and "consent"—the three main components of the legal definition of rape[6].

A stranger or an acquaintance, even a family member or close partner, might commit the offense. It may be driven by a variety of emotions, including desire, rage, hatred, retaliation, dominance, humiliation, or prejudice. It may occur in a variety of locations, including homes, offices, schools, streets, jails, conflict zones, and even online. Anyone can become a victim of rape, regardless of their age, gender identity, sexual orientation, race, ethnicity, religion, financial situation, or handicap.[7]

Rape survivors have been proven to experience deep and enduring effects from the experience. It may result in physical harm such as bruises, cuts, bleeding, fractures, infections, sexually transmitted diseases [8] , and unwanted pregnancies, abortions, miscarriages, fistulas, infertility, or even death[9]. Psychological trauma can also result from it, including depressive, anxious, fearful, dissociative, nightmares, flashbacks, poor self-esteem, guilt, humiliation, and suicide thoughts or attempts.[10]

In addition to being a crime against people, rape violates their human rights. According to the Universal Declaration of Human Rights (UDHR), everyone has the right to life, liberty, and security of person and all human beings are born free and equal in dignity and rights.[11]

The States Parties are required under the UDHR and other international human rights agreements to uphold, defend, and provide the rights of every individual, including victims of sexual assault. Accordingly, the States Parties are required to protect the human rights of rape victims from being violated, to stop and punish other people from infringing those rights, and to offer appropriate remedies and compensation when someone else violates those rights. However, many States Parties fail to fulfill their human rights obligations towards rape victims. One of the main obstacles to carrying out these duties, according to the Office of the High Commissioner for Human Rights (OHCHR), is the existence of a statute of limitations on rape cases.[12]

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[6] Paul Pressau, *Rape, Legal Definitions of: Encyclopedia of Women in Today's World*.

[7] Sexual violence myths & misconceptions | ACESDV, (Sep. 18, 2014), https://www.acesdv.org/about-sexual-domestic-violence/sexual-violence-myths-misconceptions/ (last visited Aug 12, 2023).

[8] Gina M. Wingood, Ralph J. DiClemente & Anita Raj, *Adverse Consequences of Intimate Partner Abuse among Women in Non-Urban Domestic Violence Shelters*, 19 AM. J. PREV. MED. 270 (2000).

[9] PATRICIA A. RESICK, *The Psychological Impact of Rape*, 8 J. INTERPERS. VIOLENCE 223 (1993).

[10] *Id.*

[11] United Nations, *Universal Declaration of Human Rights*, UNITED NATIONS, https://www.un.org/en/about-us/universal-declaration-of-human-rights (last visited Apr 15, 2024).

[12] OHCHR-Nepal Representative urges end to 35-day limit for filing rape charges, to mark International Women's Day (8 March) - Nepal | ReliefWeb, (2008), https://reliefweb.int/report/nepal/ohchr-nepal-representative-urges-end-35-day-limit-filing-rape-charges-mark (last visited Aug 13, 2023).

Statute of limitations is a legal concept that sets a deadline on when victims can file complaints or when prosecutors can start a prosecution for a criminal offense[13]. The logic behind statute of limitations is that it plays an important role in safeguarding rights of both victims and defendants as it helps to ascertain that evidence used in court is reliable and defendants get a fair trial.[14] However, such temporal restrictions also have negative impacts on victims of rape. They add hurdles in the path of victims seeking legal action when they are ready or have the capacity and means to do so.

The statute of limitations on rape cases is different in different countries and jurisdictions. Some countries, such as South Africa[15], have already abolished it. They recognize the gravity of the crime and the various challenges faced by victims in reporting it to authorities and seeking justice in the legal system. Other countries, such as the UK, Nepal, India and, meanwhile, have prescribed different lengths of time and conditions for statute of limitations on rape cases, ranging from one year to none. Factors such as age of the victim, the degree of the offense, and the availability of evidence determine the temporal restrictions on filing of such cases.

These differences can be attributed to the difference in legal traditions, social norms, and political philosophies that influence the law-making and amending process in different countries. This variation in different countries raise several questions and challenges for the protection and promotion of the basic human rights of rape victims.

This raises fundamental questions about the adequacy of legal frameworks in addressing sexual violence and upholding human rights. Recently the rape cases have been tremendously increasing not decreasing in Nepal. Many have been arguing eg. CEDAW Committee[16], Human Rights Council[17] and Amnesty International[18] that Nepal needs to come up with legal provisions to eliminate the whole Statutes of Limitations on rape cases. In this context, the study seeks to explore whether extending or eliminating the

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[13] STATUTE OF LIMITATIONS Definition & Meaning - Black's Law Dictionary, THE LAW DICTIONARY (2013), https://thelawdictionary.org/statute-of-limitations/ (last visited Aug 12, 2023).

[14] James Herbie DiFonzo, *In Praise of Statutes of Limitations in Sex Offense Cases*, 41 HOUS REV 1205 (2004).

[15] L v Frankel, *CRIMINAL PROCEDURE—STATUTES OF LIMITATIONS—SOUTH AFRICA REMOVES STATUTE OF LIMITATIONS DISTINCTION BETWEEN RAPE AND OTHER SEXUAL OFFENSES.—Levenstein v. Estate of Frankel 2018 (8) BCLR 921 (CC). In The# MeToo Era, Statutes of Limitations Bar Survivors from Access*.

[16] UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
71st Session of the CEDAW Committee, 22 October – 9 November 2018

[17] *Nepal: Contribution for the Special Rapporterur on Violence Against Women annual Report to Human Rights Council*, 31 Dec. 24

[18] *Nepal: Overly restrictive Statute Limitations on rape and other Sexual Violence must be removed.* Amnesty International Press release on 26 May, 2022. available at https://www.amnesty.org/en/latest/news/2022/05/nepal-overly-restrictive-statute-of-limitations-on-rape-and-other-sexual-violence-must-be-removed/#:~:text=Under%20the%202017%20penal%20code,particular%2C%20victims%20of%20child%20rape, (Last visited at 3 August 2024)

Statutes of Limitations on rape cases alone can significantly increase survivors' access to justice or several other measures need to be taken to do so.

2. Definition and Understanding Rape and Sexual Violence

2.1. Definition and Elements of Rape

The concept of rape as a crime has evolved across different cultures and legal systems in different ways. The dissimilarities reflect the societal norms, legal definitions, and the understanding of what 'consent' means.

Historically, the definition of rape often included only penile-vaginal penetration ('carnal knowledge') without consent. For example, laws in the Czech Republic and Namibia, only deemed vaginal penetration as rape, and other forms of sexual assault were classified differently.[19]

During the recent years, however, lawmakers around the world have adopted the idea of general broadening of the legal definition of rape to include non-penetrative acts of sexual violence, recognize males as victims, and address psychological coercion at the same time. For example, a German law in 1998[20] expanded the definition of rape to include acts of sexual violence in addition to the traditional penile-vaginal penetration. It also for the first time accepted that both men and women could be perpetrators and or victims. This change is considered a milestone in inclusive and comprehensive legal frameworks related to sexual crimes, acknowledging the diverse circumstances under which sexual violence may take place.

The International Criminal Tribunal for Rwanda in 1998[21] stated that rape "involves physical invasion of a sexual nature"[22] committed under coercive circumstances. This definition highlights the essential components of coercion and the invasive nature of the act, distinguishing it from other forms of sexual contact. Additionally, it expands the context in which rape can be recognized legally by specifying that it must occur as part of a widespread or systematic attack targeted at civilians, and on discriminatory grounds such as national, ethnic, political, racial, or religious differences. This definition aims to address situations of sexual violence in conflict and crisis settings, where rape can be used as a tool of war and oppression, stressing the importance of context in the classification and prosecution of such acts. Additionally, the legal treatment of rape victims has also evolved. Historically, and still today in some areas, the crime of rape is viewed as an offense against a male guardian or the state rather than against the individual woman, reflecting long standing views of women as property or secondary victims.[23] Legal

[19] id

[20] German Criminal Code (Strafgesetzbuch – StGB), (1998), https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1717 (last visited Jan 28, 2024).

[21] **3**1 International Criminal Tribunal for Rwanda (ICTR), The Prosecutor v. Jean-Paul Akayesu (Trial Judgement) (1998), https://www.refworld.org/jurisprudence/caselaw/ictr/1998/en/19275 (last visited Apr 13, 2024).

[22] **id**.

[23] **"**History of Sexual Abuse and Harrassment | Freedom and Citizenship."

distinctions based on the victim's age[24] also continue to influence how rape is defined and prosecuted, with many jurisdictions setting specific ages below which consent cannot legally be given, reflecting societal attempts to protect minors.

The changing legal landscape around the definition of rape marks a shift from viewing rape through a lens of property and chastity to recognizing it as a severe violation of personal autonomy

and bodily integrity. This transformation may be attributed to broader societal changes towards understanding and addressing the nuances of sexual violence.

In the context of Nepal, the law on rape is comprehensive[25] as it recognizes that rape can be committed even with slight insertion of male organ or anything else. However, it too has its shortcomings. The law defines the act of rape as, a man having sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent.[26] It goes on to say that consent obtained by "coercion, undue influence, intimidation, threat, misrepresentation, or kidnapping or taking of hostage"[27] or at the time when the woman is in an unsound state of mind is not considered consent. Also, the penetration of the penis into the anus or mouth or vagina or the insertion of any object other than penis into vagina is also considered rape.
The above definition suggests that in Nepal, rape is only committed by men. Nepal's law does not
recognize women as being capable of raping men or women. This could be attributed to the fact, as
mentioned above, that traditionally, the crime of rape is viewed as an offense against a male guardian
or the state rather than against the individual woman and that women are viewed as being weak and
incapable of violence.

As India and Nepal share culture, tradition and history since times immemorial, it is not surprising

that the Indian law also defines rape in a similar fashion. According to Indian law[28], which encompasses various non-consensual sexual acts committed by a man against a woman, rape includes the penetration of the man[29] penis into the vagina, mouth, urethra, or anus of

[24] Nikunj Kulshrestha, *A Critical Analysis of the Standard of Consent in Rape Law in India*, OÑATI SOCIO-LEG. SER.

[25] Ministry of Law & Nepal Justice, *The National Penal (Code) Act, 2017*, (2017), https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf.

[26] id

[27] id

[28] Ministry of Law & Government of India Justice, *The Indian Penal Code, 1860*, (1860), https://lddashboard.legislative.gov.in/actsofparliamentfromtheyear/indian-penal-code.

[29] Id

a woman, whether directly or by coercion involving another person. Moreover, the crime is defined to include the insertion of any object or any other (non-penile) part of the body into the woman's[30] vagina, urethra, or anus under similar coercive conditions.

Furthermore, it says that rape can occur also through the manipulation of any part of a woman**'**s body to cause penetration of her vagina, urethra, anus, or any body part, again including scenarios where she is forced to perform such acts with others. Finally, it includes instances where a man applies his mouth to a woman**'**s private parts or compels her to engage in such acts with him or another person[31]. This comprehensive list highlights the multiple forms that sexual violence can take, emphasizing the violation of consent as central to the crime of rape.

Rape has long been a prominent topic in legal debate, and it has changed dramatically over time to reflect shifting society values, shifting viewpoints, and changes in the law. Five essential components were traditionally included in the definition of rape: penetration, force and resistance, non-consent, and *mens rea*.[32]. But when legal frameworks change and public perceptions of sexual assault change, these components have been modified or even dropped in favour of victim-centered, inclusive strategies.

2.2. Forms of Rape

Rape is a diverse and intricate crime that can take many different forms, all of which involve the breach of bodily autonomy and non-consensual sexual activity. Here are a few examples of the various types of rape:

Acquaintance Rape*:* A friend, acquaintance, love partner, or coworker is the typical perpetrator of acquaintance rape, which is often referred to as date rape or non-stranger rape.[33] Situations when permission is ambiguous or compromised because of compulsion, deception, or incapacitation are common in this type of rape.

Stranger Rape*[34]*: When the victim is not familiar with the attacker, stranger rape happens and usually entails an attack by an unidentified person. This type of rape can take place in private settings, such house invasions, or in public places, like streets or parks.

Marital Rape*:* Sexual activity without the agreement of one's husband or intimate partner is referred to as marital rape, also known as spousal rape or intimate partner rape. Marital rape was not formerly considered a crime in many places, but legislative changes have made it more of a crime.[35]

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[30] Id.

[31] Id

[32] MARY ZEISS STANGE, CAROL K OYSTER & JANE E SLOAN, ENCYCLOPEDIA OF WOMEN IN TODAY'S WORLD (2011)

[33] MARK COWLING, DATE RAPE AND CONSENT (0 ed. 2018), https://www.taylorfrancis.com/books/9780429860584 (last visited Jun 8, 2024).

[34] Mary P. Koss et al., *Stranger and Acquaintance Rape: Are There Differences In the Victim's Experience?*, 12 PSYCHOL. WOMEN Q. 1 (1988).

[35] Martin, Taft, and Resick, "A Review of Marital Rape."

Drug-Facilitated Rape[36]: When a perpetrator gives a victim drugs or alcohol to make them incapable of resisting or refusing sexual advances, this is known as drug-facilitated rape. Alcohol, ketamine, GHB, and Rohypnol (roofies) are often used substances in drug-facilitated rape.[37]

Gang Rape[38]: Sexual attack against a single victim by several assailants is known as gang rape. This type of rape frequently takes place in situations when there is collective violence, including armed battles, riots, hazing rites, or social events where onlookers may assist or join in the attack.

Statutory Rape: Even when there is permission, having sex with someone under the legal age of consent is considered statutory rape.[39] While it varies by jurisdiction, consenting adults usually need to be between the ages of 16 and 18. The purpose of statutory rape legislation is to shield adolescents from exploitation and abuse, even if they don't think the sexual conduct was consenting.[40].

Custodial Rape*:* When someone in a position of authority or trust—such as a teacher, jail guard, law enforcement officer, or healthcare provider—abuses that position to compel or force a victim into engaging in sexual intercourse, it is known as custodial rape[41]. This type of rape frequently makes use of power imbalances and weaknesses.

War Rape*:* Rape and other types of sexual violence perpetrated during armed conflict or war are referred to as war rape, also known as wartime sexual violence or conflict-related sexual violence. War rape is frequently employed as a tactic to intimidate and demoralize people, establish control, and cause unrest in neighbourhoods.[42]

Cyber Rape*:* Cyber-rape refers to any form of sexual assault or harassment that is made possible by digital technologies. Examples of this include revenge porn, sextortion, online grooming, and virtual sexual assault in virtual reality settings. [43]. This type of rape takes use of the accessibility and anonymity provided by internet platforms to cause harm.

These are but a few instances of the various types of rape, each with unique dynamics, situations, and effects on survivors. It's critical to acknowledge that rape is a complicated

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[36] Laura Jane Anderson, Asher Flynn & Jennifer Lucinda Pilgrim, *A Global Epidemiological Perspective on the Toxicology of Drug-Facilitated Sexual Assault: A Systematic Review*, 47 J. FORENSIC LEG. MED. 46 (2017).

[37] *Id.*

[38] Richa Sharma & Susan Bazilli, *Violence against Women: What's Law Got to Do with It? A Reflection on Gang Rape in India*, 3 INT. J. CRIME JUSTICE SOC. DEMOCR. 4 (2014).

[39] ENCYCLOPEDIA OF RAPE, *supra* note 28.

[40] *Id.*

[41] Soumya Ranjan, *Custodial Rapes in India*, 2 JUS CORPUS LJ 952 (2021).

[42] *supra* note 31.

[43] Asaf Harduf, *Rape Goes Cyber: Online Violations of Sexual Autonomy*, 50 UNIV. BALTIM. LAW REV. 2 (2021).

social and legal issue that calls for all-encompassing solutions, such as support services, prevention, and holding offenders legally accountable.

Gender neutrality and rape: Gender equality, justice, and human rights are major topics that are intersected by the complicated and divisive matter of gender neutrality in rape legislation and debate. Rape laws have historically been written in a way that upholds patriarchal standards and presumptions around gender and sexuality. Arcane laws against rape sometimes defined it narrowly as a crime committed by a male against a woman, perpetuating the idea that men are the aggressors and women are the passive victims.[44] This gendered response to rape discredited positive stereotypes of sexual assault, disenfranchised male survivors, and denied legal rights to non-binary and transgender people.[45]

In the recent years, lawmakers around the world are increasingly recognizing the significance of statute of the limitations on gender-specific rape laws and are pushing for gender neutrality when it comes to describing sexual violence. These gender-neutral laws take a view on rape based on the absence of consent rather than what is the gender of the victim or perpetrator. This kind of approach incorporates a broader range of sexual acts and identities.[46] They recognize that anyone, regardless of their gender, can play the role of victims or perpetrators.

Gender-neutral approaches to rape imagine the variety of experiences and vulnerabilities that victims and survivors may go through. They not only adopt an inclusive tone and language, but also provide legal frameworks that follow the same mantra. They also attempt to address systemic inequalities and intersectional forms of oppression prevalent in society that contribute to sexual violence. This approach recognizes that gender-based violence intersects with other forms of oppression and discrimination, such as racism, ableism, and homophobia. It seeks to address these intersecting factors in prevention of and response against sexual violence.

Gender neutrality in rape legislation is important, but translating it to practice is rife with difficulties and challenges. Gender-neutral law, according to some opponents, may dampen the distinctiveness of gender-based violence which could further embolden sexism and patriarchy.[47]

2.3 Act of Rape beyond the Criminal justice system

Sexual assault is a pervasive issue that transcends the jurisdiction of the criminal justice system, particularly in cases of rape. Understanding and paying attention to the underlying reasons, societal norms that support sexual aggression, and the limitations of punitive

[44] Nguyen, *supra* note 41.

[45] Philip NS Rumney, *In Defence of Gender Neutrality within Rape*, 6 SEATTLE J SOC JUST 481 (2007).

[46] Id

[47] Id

methods are all necessary for developing comprehensive strategies to prevent sexual violence.[48]

To understand why anyone commits sexual violence. it is essential to consider a multitude of factors such as psychological, social, and environmental. Significant among them is the dynamics of power. It is often believed that rape is less about sexual desire and more about exerting control and dominance over the victim.[49] According to psychological research, those who rape others often feel the desire to control them, and this may have its origins in their own traumatizing or helpless experiences. [50]

Moreover, other things that contribute to this are: cultural conventions and media portrayals that frequently objectify women and reinforce sexist beliefs. They also tacitly endorse violent sexual behaviour. [51] Where such attitudes are pervasive, potential perpetrators may feel emboldened to commit acts of sexual violence. Peer pressure and social dynamics can further worsen this behaviour, especially in young males who want to exhibit their manhood and get the favour of their peers. [52]

Sexual aggressiveness is heavily influenced by cultural attitudes and social standards. Many cultures have normalized male dominance and female submissiveness, which contributes to a power imbalance that can result in sexual violence.[53]. For example, traditional gender roles often portray men as assertive and women as passive, which can create a sense of entitlement among men and a reluctance to assert boundaries among women.[54]

The way relationships and sexuality are portrayed in the media exacerbates this problem. In movies, TV series, and pornography, forceful sexual approaches are frequently portrayed as attractive or even acceptable[55]. These representations have the potential to legitimize coercive behaviour and distort views of consent. Furthermore, victim-blaming

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[48] Richa Sharma & Susan Bazilli, *Violence against Women: What's Law Got to Do with It? A Reflection on Gang Rape in India*, 3 INT. J. CRIME JUSTICE SOC. DEMOCR. 4 (2014).

[49] SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN, AND RAPE (1975).

[50] Julia Metz, Kristen Myers & Patricia Wallace, *'Rape Is a Man's Issue:'gender and Power in the Era of Affirmative Sexual Consent*, 30 J. GEND. STUD. 52 (2021).

[51] JAN JORDAN, TACKLING RAPE CULTURE: ENDING PATRIARCHY (1 ed. 2022), https://www.taylorfrancis.com/books/9781003289913 (last visited Jun 10, 2024).

[52] CARMEN M. CUSACK, CRIMINAL JUSTICE HANDBOOK ON MASCULINITY, MALE AGGRESSION, AND SEXUALITY (2015).

[53] Julia Metz, Kristen Myers & Patricia Wallace, *'Rape Is a Man's Issue:'gender and Power in the Era of Affirmative Sexual Consent*, 30 J. GEND. STUD. 52 (2021).

[54] Karolynn Siegel & Étienne Meunier, *Traditional Sex and Gender Stereotypes in the Relationships of Non-Disclosing Behaviorally Bisexual Men*, 48 ARCH. SEX. BEHAV. 333 (2019).

[55] Shireen Bernstein et al., *Pressure, Preoccupation, and Porn: The Relationship between Internet Pornography, Gendered Attitudes, and Sexual Coercion in Young Adults.*, 12 PSYCHOL. POP. MEDIA 159 (2023).

mindsets are pervasive in many countries and deter survivors from coming forward with assault reports and pursuing justice, which feeds the cycle of impunity and silence.

Criminal law has inherent limits. It is a crucial instrument in combating sexual assault as it punishes offenders and gives victims a feeling of justice. But the system only responds after a crime has been committed rather than working to prevent them. Due to its reactive character, by the time legal action is taken, the damage has already been done.[56]

In addition, survivors may experience new trauma during the judicial procedure. Many survivors may decide not to pursue legal action due to the adversarial nature of court procedures, the necessity for them to provide a detailed account of their experiences, and the possibility of victim-blaming.[57] Furthermore, there is a heavy burden of proof in criminal trials, which frequently leads to a low conviction rate for sexual offenses. This may give offenders the impression that they are getting away with it while giving survivors a sense of unfairness.

Developing and implementing preventive ways to address the underlying causes of sexual assault is essential, especially in light of the limits of criminal legislation. In this sense, education is an effective instrument. Comprehensive sex education programs may dramatically change attitudes and behaviours by covering topics like consent, respectful partnerships, and healthy relationships.[58] Such programs should start early and continue throughout an individual's educational journey to ensure that these values are ingrained from a young age.

Initiatives to make the public aware about the gravity of these issues is another way of addressing the issue. They can raise awareness about negative stereotypes, contribute to the cause of gender equality, and call for witnesses to act when they see such a crime happen before their eyes. They have the power to change cultural norms and lower the incidence of sexual assault.

For example, recent global campaigns such as "Me Too" have raised awareness about sexual harassment and assault on a worldwide scale, leading to extensive social and cultural transformation.[59] In addition to educational and awareness efforts, community-based approaches can also be beneficial. Creating safe spaces for dialogue and support to victims, particularly for marginalized groups, can empower individuals and communities to take action against sexual violence. Programs that bring on board men and boys to

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[56] Julian Molina & Sarah Poppleton, *Rape Survivors and the Criminal Justice System*, VICT. COMM. AVAILABLE HTTPSVICTIMSCOMMISSIONER ORG UKDOCUMENTRAPE-SURVIV.---CRIM.-JUSTICE-SYST. 3 APRIL 2023 (2020).

[57] Negar Katirai, *Retraumatized in Court*, 62 ARIZ REV 81 (2020).

[58] Nicole Haberland & Deborah Rogow, *Sexuality Education: Emerging Trends in Evidence and Practice*, 56 J. ADOLESC. HEALTH S15 (2015).

[59] Judy E Battaglia, Paige P Edley & Victoria Ann Newsom, *Intersectional Feminisms and Sexual Violence in the Era of Me Too, Trump, and Kavanaugh*, 42 WOMEN LANG. 133 (2019).

discuss topics about masculinity, respect, and consent are particularly important in addressing the cultural norms that promote sexual aggression[60].

Rape as violation of sexual autonomy

Unquestionably violating a person's sexual autonomy, rape is one of the worst transgressions against their physical integrity, dignity, and basic rights. It takes away the freedom to make decisions about one's own body and sexual experiences as well as agency and autonomy.

The foundation of sexual autonomy is the notion of consent, which upholds a person's freedom to make conscious and voluntary decisions about their bodies and sexual experiences. This idea is sharply at odds with rape, which involves forcing someone to do sexual actions against their will, destroying the victim's autonomy and preventing them from having the option to participate in sexual activity.[61] The degradation of autonomy in rape situations is compounded by power dynamics, when offenders use their authority, dominance, or physical strength to intimidate and dominate their victims. Because of these power disparities, victims are helpless to defend themselves or stop the attack and are instead open to coercion, threats, or open physical violence.[62]

Furthermore, rape disregards the victim's sovereignty and bodily integrity, transgressing their sacred limits. Victims' freedom to choose who and how to touch them is violated when perpetrators intrude into their emotional and physical space. A deep sense of fear, mistrust, and loss of control over one's own body are engendered by this transgression.[63]

Rape not only causes severe physical harm but also has a profound psychological impact that may never fully heal for the victim.[64]

Contexts that are social and cultural are crucial in sustaining sexual autonomy and rape. Rape culture encourages attitudes, beliefs, and behaviours that weaken survivors' sense of agency by normalizing and trivializing sexual assault. Victim-blaming narratives, damaging stereotypes, and societal stigmatization all contribute to the loss of autonomy by reiterating oppressive and unequal patterns.[65]

The manner that rape laws and institutions are handled has a big impact on how survivors feel about themselves. It may either support or undermine their rights. Insufficient legal

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[60] Julia Metz, Kristen Myers & Patricia Wallace, *'Rape Is a Man's Issue:'gender and Power in the Era of Affirmative Sexual Consent*, 30 J. GEND. STUD. 52 (2021).

[61] Shireen Bernstein et al., *Pressure, Preoccupation, and Porn: The Relationship between Internet Pornography, Gendered Attitudes, and Sexual Coercion in Young Adults.*, 12 PSYCHOL. POP. MEDIA 159 (2023).

[62] Susan A Lentz & Robert H Chaires, *Sexual Assault Statutes Targeting Authority & Power Imbalances: A Step Forward in Rape Law Reform*, 3 FREEDOM CENT. J 1 (2011).

[63] Burge, *supra* note 116.

[64] *Id.*

[65] *Id.*

frameworks, callous law enforcement tactics, and prejudiced court cases can exacerbate the trauma endured by survivors and sustain oppressive institutions. On the other hand, survivor-centered strategies that put an emphasis on empowerment, permission, and secrecy can be rays of hope, confirming survivors' right to self-determination and easing their path to rehabilitation.

Rape as gross violation of human dignity

Rape stands as an egregious affront to human dignity, epitomizing one of the most severe assaults on an individual's inherent worth, integrity, and fundamental rights. In exploring the depths of this violation, let's look at how rape constitutes a profound infringement upon human dignity. The understanding of each person's intrinsic value and respect, regardless of gender, colour, or any other trait, is the foundation of human dignity. However, rape blatantly violates this fundamental idea by treating the victim as a simple object of desire or possession.[66] Rape dehumanizes the victim by taking away their autonomy and using them as a tool, undermining their sense of dignity and value. [67]

The right to physical integrity and protection from mental and physical damage are included in the concept of human dignity. Rape, however, breaches these rights since it subjects the victim to violence, compulsion, and unwelcome sexual contact.[68] The psychological and physical wounds cause the victim to lose confidence in their own abilities to manage their own body and emotions as well as their feeling of safety.[69] The disintegration of dignity in circumstances of rape is further compounded by dynamics of power and control. Victims are denied agency and autonomy when perpetrators use their physical strength or positions of authority to enslave and overwhelm them. This abuse continues the degradation of human dignity by supporting oppressive and unequal regimes.[70]

The freedom to freely and unambiguously grant or withhold permission is essential to human dignity. Rape, however, violates this ideal by taking advantage of the victim's incapacity or lack of permission to provide it freely. Via threats, physical force, or the use of weaknesses, those who commit crimes deprive victims of their autonomy and cause them great humiliation.[71] Rape has a profound effect on a victim's sense of self-worth, identity, and trust, extending beyond the immediate trauma. Survivors may be afflicted

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[66] Roy F. Baumeister, Kathleen R. Catanese & Harry M. Wallace, *Conquest by Force: A Narcissistic Reactance Theory of Rape and Sexual Coercion*, 6 REV. GEN. PSYCHOL. 92 (2002).

[67] Avigail Moor et al., *Rape: A Trauma of Paralyzing Dehumanization*, 22 J. AGGRESS. MALTREATMENT TRAUMA 1051 (2013).

[68] Rape victims worldwide denied justice and dignity, AMNESTY INTERNATIONAL (2010), https://www.amnesty.org/en/latest/press-release/2010/03/rape-victims-worldwide-denied-justice-and-dignity/ (last visited Aug 27, 2023).

[69] Vars, *supra* note 14.

[70] Lentz and Chaires, *supra* note 160.

[71] Dorothy E Roberts, *Rape, Violence, and Women's Autonomy*, 69 CHI-KENT REV 359 (1993).

with feelings of shame, remorse, and self-blame, which deprive them of their dignity and capacity to live without fear or stigma.[72]

The degradation of human dignity is further exacerbated by societal and cultural attitudes that are ingrained in the rape culture. Sexual assault is normalized or excused by society, which feeds negative stereotypes, victim-blaming stories, and the stigmatization of survivors.[73] These viewpoints undermine human dignity structurally by marginalizing and silencing survivors as well as by sustaining violent cycles.

Rape as crime against humanity

Rape can also be classified as a crime against humanity, particularly when it occurs in the context of a larger, organized assault on the civilian population. This acknowledgement is based on human rights principles and international humanitarian law, which denounce sexual assault as a serious breach of human dignity and an infringement on people's fundamental freedoms.

The Rome Statute of the International Criminal Court (ICC)[74] defines a crime against humanity as any of the following actions, when carried out as part of a systematic or widespread attack against any civilian population: rape, torture, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, murder, extermination, enslavement, deportation or forcible population transfer, incarceration or other severe loss of physical liberty, or any other equivalent form of sexual abuse.[75]

The International Criminal Tribunal for Rwanda in 1998[76] stated that rape involves a "physical invasion of a sexual nature"[77] committed under coercive circumstances. This definition sets it apart from other types of sexual contact by emphasizing the fundamental elements of compulsion and the intrusive character of the act. By stating that rape must take place as part of a widespread or systematic attack directed at civilians and on the basis of discriminatory grounds such national, ethnic, political, racial, or religious differences, it also broadens the context in which it can be legally recognized. This definition emphasizes the significance of context in the classification and prosecution of such actions, with a focus on sexual assault scenarios in conflict and crisis contexts, when rape can be used as a instrument of oppression and war.

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[72] RESICK, *supra* note 5.

[73] Laura Sinko et al., *Internalized Messages: The Role of Sexual Violence Normalization on Meaning-Making after Campus Sexual Violence*, 30 J. AGGRESS. MALTREATMENT TRAUMA 565 (2021).

[74] Mahnoush H Arsanjani, *The Rome Statute of the International Criminal Court*, 93 AM. J. INT. LAW 22 (1999).

[75] How the Court works, https://www.icc-cpi.int/about/how-the-court-works (last visited May 8, 2024).

[76] *supra* note 31.

[77] International Criminal Tribunal for Rwanda (ICTR), The Prosecutor v. Jean-Paul Akayesu (Trial Judgement) (1998), https://www.refworld.org/jurisprudence/caselaw/ictr/1998/en/19275 (last visited Apr 13, 2024).

Rape must be a part of a broad or organized attack against the civilian population in order to be considered a crime against humanity. This suggests a pattern of coordinated and planned behavior by state or non-state actors with the aim to carry out widespread acts of sexual assault on civilians, selecting victims according to their identity, affiliation, or perceived weaknesses.[78]. Because of the severe effects that rape has on survivors' physical, psychological, and emotional well-being as well as the wider societal fallout, it is regarded by international law as one of the most serious crimes. In addition to the pain endured by survivors on an individual basis, rape also has wider ramifications for families, communities, and future generations, making it a serious crime against humanity.

Rape is frequently used to terrify, humiliate, and oppress civilian populations—particularly women and girls—as a tool of war, terrorism, or political repression.[79] Rapists may purposefully target victims in wars and mass violence scenarios based on their gender, race, religion, or other identification markers. They may accomplish this by using rape as a tool to establish their supremacy over whole communities.[80]

2.4. Statute of Limitation, rape and victims

2.4.1. Understanding and defining statute of limitations

The Statute of Limitations refers to a time limit that people have to claim their rights; if that time limit passes, the person's claim is legally terminated. The statute of limitations is one of the important considerations the court considers before taking a case, along with jurisdictions and *locus standi,* which is why it is sometimes referred to as *"prima facie"* in legislation that place time restrictions on pre-existing rights of action.

The timing of the start of legal proceedings is important since there is a greater likelihood of witnesses, evidence, and memories deteriorating with the passage of time. This emphasizes how crucial it is for individuals to file lawsuits within a certain window of time in order to ensure their right to prompt justice. The proverb "Justice postponed is justice denied" highlights the necessity of taking legal action as soon as possible. People are encouraged to seek justice as soon as possible by the Statute of Limitations since delaying it might result in the loss of their rights.

Since the Statute of Limitations is seen as a legal problem, the court may discuss it at any time. In the event that a complaint is filed with the court after the Statute of Limitations has passed, the court may dismiss the case for that reason. Statutes of limitations is believed to play a crucial role in the legal system by setting a time limit within which legal proceedings [81]must be initiated for a particular offense. Advocates of this approach assert that it facilitates prompt judicial proceedings, enabling conflicts to be settled while

[78] Rape and sexual violence: Human rights law and standards in the International Criminal Court, *supra* note 135.
[79] Id
[80] ENCYCLOPEDIA OF RAPE, *supra* note 28.
[81] Vitiello, *supra* note 27.

witnesses and evidence are still available and memories are still clear. This encourages accuracy and impartiality in court cases. In a similar vein, it shields defendants from ongoing judicial proceedings. It gives people a feeling of closure and finality by removing the ongoing fear of being sued for things they did in the past.

Furthermore, statutes of limitations contribute to judicial efficiency by setting deadlines for the initiation of legal actions. It encourages prompt conflict resolution and keeps court dockets free of stale claims.[82] Another common defense is that it motivates plaintiffs to vigorously pursue their claims and avoid needlessly postponing legal action. This facilitates the speedy settlement of conflicts and guards against the exploitation of the legal system through pending or baseless lawsuits.[83] It is thought that statutes of limitations strike a compromise between giving legal certainty by clearly defining the time restrictions within which lawsuits must be filed and permitting some leeway in extraordinary situations where the deadline may be tolled or extended.

However, there are also those who are opposed to the idea. There are also several downsides of a statute of limitations[84]. They contend that although statutes of limitations have useful functions in judicial systems, their application to instances of past injustices can provide moral conundrums. These restrictions might make it more difficult to pursue justice, exacerbate existing suffering, and cast doubt on our moral duty to right historical wrongs. Victims of previous injustices may not receive justice if a statute of limitations is imposed. It restricts people's capacity to demand justice for wrongs done to them, even when the injustice's consequences continue for a long period.

Additionally, a statute of limitations can prolong the consequences of previous injustices by placing a deadline on requests for rectification. It may make it difficult to recognize and right historical wrongs, which would enable injustices to persist unchecked. Some contend that moral obligations should never expire, particularly in situations involving serious injustices like crimes against humanity. Setting a deadline for rectification requests might compromise the moral need to confront and right historical wrongs. Furthermore, it may become more difficult to adequately address allegations of unfairness as time goes on. But merely enacting a statute of limitations might not be sufficient to handle all of the subtleties and difficulties involved in redressing historical injustices.[85] [86]

The cause of action hypothesis states that the moment the cause of action accrues is usually when the victim's clock starts to run for filing a lawsuit. When all the components required to establish a legal claim—such as the commission of the wrongdoing, the harm

[82] James Herbie DiFonzo, *In Praise of Statutes of Limitations in Sex Offense Cases*, 41 HOUS REV 1205 (2004).

[83] Id

[84] Rodney C. Roberts, *The Morality of a Moral Statute of Limitations on Injustice*, 7 J. ETHICS 115 (2003).

[85] Roberts.

[86] Roberts, *supra* note 105.

or injury that results from it, and the identification of the person who caused it—come together, a cause of action begins to accrue.[87]

In rape cases, the cause of action typically revolves around the violation of the victim's bodily integrity and autonomy. The survivor may have various legal avenues to pursue justice and seek redress for the harm suffered. Although the cause of action is usually where the Statute of Limitations begins, there are situations in which the plaintiff learns of the harm after the statute of limitations has passed. The Statute of Limitations is reset in certain situations by the Discovery Rule[88], which takes effect upon the discovery of the damage rather than the cause of action.

A common scenario is that an injury is found after the time period allowed by the Statute of Limitations has passed. The court might or might not take this into consideration.

The discovery rule presents a problem in rape cases since the plaintiff usually learns of the sexual conduct at the scene, which results in the accrual of the cause of action and the start of the Statute of Limitations. It is, however, impossible to claim in court that the plaintiff only recognized the rape occurred after some time had elapsed.

The idea of *nullum tempus occurrit regi,* or "time does not run against the monarch," is another exception to the Statute of Limitations[89]. According to this common law theory, crimes or wrongs done against the sovereign are exempt from the Statute of Limitations, which means that the state may continue to pursue someone even after the statutory deadline has passed. This notion is based on the idea that the monarch has the power to bring legal action against those who have wronged the sovereign since he is the guardian of public rights. In essence, *nullum tempus occurrit regi* ensures that the state retains the power to prosecute individuals who may have evaded legal consequences due to the passage of time. This doctrine serves as a safeguard to preserve public order and uphold the integrity of the legal system, allowing the state to hold accountable those who have violated the law, regardless of the elapsed time since the commission of the offense.

2.4.2 Provisions of Limitations on Rape in International Jurisdictions

In South Africa, until 2018[90] there was a 20-year prescription period for prosecuting rape and sexual offenses. However, on June 14, 2018, in the case of *Nicole Levenstein and others v The Estate of the Late Sydney Lewis Frankel and others*[91], the Constitutional

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[87] Jonathan LT Chu, *"Continuing Cause of Action" Revisited* (2024).

[88] George Rutherglen, *Statutes of Limitations: Claims Forgotten, Forgiven, or Foregone?*, 72 RUTGERS UL REV 1 (2019).

[89] Sigmund D Schutz, *Time to Reconsider Nullum Tempus Occurrit Regi-The Applicability of Statutes of Limitations Against the State of Maine in Civil Actions*, 55 ME REV 373 (2002).

[90] v L Frankel, *CRIMINAL PROCEDURE—STATUTES OF LIMITATIONS—SOUTH AFRICA REMOVES STATUTE OF LIMITATIONS DISTINCTION BETWEEN RAPE AND OTHER SEXUAL OFFENSES.—Levenstein v. Estate of Frankel 2018 (8) BCLR 921 (CC). In The# MeToo Era, Statutes of Limitations Bar Survivors from Access.*

[91] Id

Court ruled that even if a long time has passed since the crime of rape or sexual offense, criminal prosecution against the offender can still proceed.

This ruling took into account the possibility that the victim's reluctance, social stigma, lack of knowledge about the offense, and the psychological trauma experienced by the victim might prevent them from coming forward immediately. Additionally, it recognized that child victims of sexual offenses might take many years to understand that they were victims and to feel the need to report it.[92]As a result, the court removed the time limitation from the "prescription category" under Section 18 of the Criminal Procedure Act, 1977[93], ensuring that no time limit applies to these offenses.

When the court made its decision to remove the prescription (time limit) for sexual offenses, it did so based on the following grounds:

(a) Sexual offenses can cause long-term psychological issues for the victim, not just physical harm.

(b) At the time of the ruling, the existing legal framework in South Africa was not fully aligned with its commitment to protecting women and children.

(c) It was deemed necessary that there should be no distinction between adult and child victims in these cases.

(d) There are valid reasons why victims of sexual offenses might be unable or unwilling to file a complaint or discuss the offense with others.

(e) Child victims of rape often only gather the courage to file a complaint or disclose the offense after receiving support from someone. Psychological trauma can lead victims to blame themselves, keep the incident secret, and experience fear and guilt.

(f) Punishing someone who has committed a sexual offense in the past does not necessarily cause unjust repercussions, as there is no doubt under the applicable law that the offender has committed a heinous crime. The time limit should not imply that the offense was not committed.

In South Africa, for sexual offenses, the previous 20-year prescription period was suspended by the court for 24 months.[94] During this 24-month period, the parliament was instructed to make necessary amendments to the law regarding sexual offenses, which ultimately led to the removal of the prescription period altogether.

In Canada, the legal provisions for statutes of limitations in cases of sexual offenses vary from province to province. In the provinces of British Columbia, Alberta, Saskatchewan, Nova Scotia, Newfoundland & Labrador, New Brunswick, Manitoba, Ontario, and

[92] Id
[93] Id
[94] Id

Yukon[95], there is no statute of limitations for sexual abuse cases, meaning claims can be filed at any time.[96] In the Northwest Territories, the statute of limitations applies depending on the nature of the case, while in Quebec[97], there is a statute of limitations. In Prince Edward Island[98], there is no statute of limitations only if the victim was a minor at the time of the abuse.

In the case of M.K. vs. M.H. (1992)[99], the petitioner, who had been sexually abused by her father, filed a lawsuit in 1985 at the age of 28, claiming damages for the abuse and breach of fiduciary duty by her parents. The jury found that her father had indeed sexually abused his daughter and awarded her $50,000 in damages. However, the judge's decision was contrary to Section 45 of the Limitation Act, 2012[100]. In this case, the court considered the following grounds:

(a) Whether incest constitutes a breach of fiduciary duty by a parent that is not subject to any limitation period.

(b) According to the Reasonable Discoverability Rule, the statute of limitations only applies once the victim becomes sufficiently aware of the harm and its possible cause. (Incest is both a tortious assault and a breach of fiduciary duty.)

(c) The statute of limitations does not apply until the victim is reasonably able to recognize the wrongful nature of the defendant's actions and the connection between those actions and the victim's injury.

(d) The limitation period only begins to apply once the victim realizes they have been harmed, which in this case, occurred only after the appellant began therapy. The appellant filed the lawsuit shortly after this realization, leading to the conclusion that the statute of limitations applies only after the victim becomes aware of the harm.[101]

In the United Kingdom, the Sexual Offences Act 2003[102] defines sexual assault, rape, and sexual assault by penetration. Section 1 of this Act defines rape and prescribes a penalty of life imprisonment for this offense. Section 2 defines assault by penetration and also prescribes life imprisonment as the penalty for this offense. Section 3 provides the definition of sexual assault, which carries a penalty of imprisonment ranging from six months to ten years. Section 4 defines[103] the offense of causing a person to engage in sexual activity without consent, also prescribing a penalty of imprisonment ranging from

[95] https://shorturl.at/k0E7i
[96] Id
[97] id
[98] id
[99] (accessed September 9, 2024)
[100] Id
[101] Id
[102] Arfan Khan, *Sexual Offences Act 2003*, 68 J. CRIM. LAW 220 (2004).
[103] Id

six months to ten years. Additionally, for offenses involving minors under the age of 13, Section 5 encompasses four offenses: rape, assault by penetration, sexual assault, and causing or inciting a person to engage in sexual activity, all of which are subject to strict penalties.

In the United Kingdom, the Limitations Act 1980[104] does not prescribe a statute of limitations for any sexual offenses. Victims, especially children, may find it difficult to disclose or understand the injustice they have faced, and they might not be in a position to report the abuse to anyone. Therefore, there is no statute of limitations for such offenses. Similarly, in relation to sexual offenses conducted through electronic means, the Sexual Offences Act 2003 provides penalties for offenses involving children, such as child sexual communication, exposing a child to sexual material, voyeurism, and extreme pornography. There is also no statute of limitations for these offenses.

Unlike civil cases, in India, where specific time limits govern the filing of lawsuits, most jurisdictions in India do not impose any limitation period for criminal offenses like rape[105]. This means that victims can report instances of rape at any time after the incident, allowing for the pursuit of justice regardless of when the offense occurred.

The common law doctrine of *nullum tempus occurrit regi* meaning "time does not run against the crown," holds significance in criminal proceedings. It signifies that crimes committed against the state are considered offenses against the sovereign authority itself. Consequently, the state, represented by the government, retains the prerogative to initiate criminal proceedings at any time, with sovereign immunity shielding it from limitations. However, this doctrine is gradually waning in civil suits. Section 26 of the Limitation Act, 1908 [106] , introduces a distinction in the limitation period for suits against the government.[107] While the ordinary period for filing suits, including those related to easement rights, is 20 years, an extraordinary period of 60 years is mandated when initiating proceedings against the government.

In India, serious offenses like murder, rape, and robbery typically have no limitation period in India, certain summary offenses, categorized as less serious offenses, may be subject to limitations in specific jurisdictions.[108] For instance, offenses such as the unlawful use of a driver's license may be barred by limitation in certain states. However, grave offenses remain exempt from such limitations, emphasizing the gravity of crimes like rape and the pursuit of justice without temporal constraints.

[104] Limitation Act 1980, c. 58, § 11 (UK). Available at: https://www.legislation.gov.uk/ukpga/1980/58.
[105] Titus et al., "Statute of Limitation for Criminal Prosecution in India."
[106] Supra note 104
[107] Id
[108] Government of India, the Limitation Act 1963.

3. Statute of limitations on Rape crimes in Nepal

3.1. Trend of Sexual Assault in Nepal: Increasing Culture of Rape and Impunity

According to the data maintained by Nepal Police Headquarters, the number of cases related to rape has steadily increased over the past few years. Data suggests that 912 rape cases were registered across the country in 2071/72 (2014/15).[109] The number rose to 2,380 in 2021/22. In 2079/80 (2022/23)[110], district government attorneys across the country pressed 69,259 cases related to crime of which 7,343 (around 10 percent) of the crimes were related to rape.[111] While 773 cases related to rape were under trial across the country, conviction was pronounced only in 60 cases, the accused was not found guilty in 40 cases. However, the number of pending cases stood at a staggering 669. This shows that although the number of reported cases is rising in Nepal, the investigative and judicial processes are lengthy and verdicts take a lot of time.

There also have been several reports where police officials attempt to force the parties to reach an out of court settlement against the law. Also, there have been incidents in which the police have denied filing complaints or failed to provide security to the victims. As a result of this, they are forced to turn hostile. In addition to this, the statute of limitations imposed on rape cases has made it difficult for survivors to seek legal help as they are unaware of such provisions.

3.2. Constitutional & Legal Provisions against Rape and Sexual Violence

Nepal's legal landscape concerning rape and sexual offenses has evolved over time. The Muluki Ain (General Code) of 1854 represented the initial codification addressing rape and related offenses, distinguishing between two age categories and imposing varying penalties based on caste, without any statute of limitations.[112]

While the Muluki Ain has historically shaped Nepal's legal response to crimes such as rape, scrutiny reveals certain provisions criticized for their limited scope, gender bias, and insufficiency. Section 132 narrowly defined rape as non-consensual sexual intercourse between a man and a woman other than his spouse[113]. A significant oversight in the Muluki Ain was its failure to criminalize marital rape. By confining rape to instances where a man engages in sexual intercourse with a woman outside marriage, the law

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[109] NEPAL POLICE, *Annual Fact Sheet on Gender-Based Violence*, https://www.nepalpolice.gov.np/media/filer_public/bc/d0/bcd064f5-284a-492a-b424-def0a6800de2/fy-2078-79-annual-infographics-en.pdf (last visited June 8, 2024).

[110] Id

[111] OFFICE OF THE ATTORNEY GENERAL, *Annual Report of the Office of the Attorney General*, https://ag.gov.np/storage/postFile/Annual%20Report%2007980_1706021784.pdf (last visited Jun 8, 2024).

[112] RAJAN KHATIWODA, SIMON CUBELIC & AXEL MICHAELS, " MULUKĪ AIN" OF 1854: NEPAL'S FIRST LEGAL CODE (2021).

[113] *Id.*

disregarded the prevalence of sexual violence within marital relationships, perpetuating harmful stereotypes and denying justice to numerous survivors.

In 1963, a revised Muluki Ain was introduced, introducing a 35-day statute of limitations for rape cases, including those involving custodial rape. However, the definition of rape excluded oral or anal penetration, limiting legal protection for survivors and failing to address the full spectrum of non-consensual sexual acts.[114] This narrow interpretation not only overlooked survivor experiences but also hindered efforts to combat all forms of sexual violence.

Another significant oversight was the Muluki Ain's failure to address rape perpetrated by women or by persons of the same sex. By framing rape exclusively as a crime committed by men against women, the law overlooks the diverse realities of sexual violence and fails to provide adequate protections for all survivors, regardless of gender or sexual orientation.

Moreover, the Muluki Ain lacked provisions addressing the issue of consent and its nuances. Consent lies at the heart of any meaningful discussion on sexual violence, yet the law fails to provide clear guidance on how consent should be defined, understood, and upheld in cases of rape. In addition to these shortcomings, the Muluki Ain did not provide for aggravated forms of rape or enhanced penalties for particularly heinous acts of sexual violence. This failure to differentiate between different degrees of rape undermines the severity of the crime and may result in lenient sentencing for offenders. Furthermore, the Muluki Ain failed to adequately protect the identity and dignity of rape victims. Survivors may face stigma, discrimination, and further harm due to the lack of provisions safeguarding their privacy and well-being.

The first major reform in the laws on rape and sexual crimes in Nepal came after the democratic movement of 1990. The Constitution of Nepal (1990) recognized the right to equality and non-discrimination as fundamental rights[115]. The Constitution also ratified various international human rights treaties and conventions that dealt with rape and sexual crimes. The Muluki Ain (Amendment) Act (1992) introduced several changes in the Muluki Ain to deal with rape and sexual crimes more effectively. It increased the punishment for rape from 10 years to 15 years imprisonment of seven to 10 years in case a victim is above the age of 10 and under the age of 16 years and imprisonment of five to seven years in case a woman is 16 years or above.

Similarly, an amendment brought in 2006 expanded the definition of rape from the traditional one that only recognized complete penile penetration. It also defined consent and said that consent given when the victim isn't in the right senses can't be considered consent. Similarly, penetration into the anus and mouth or any other foreign object. In the Sapna *Pradhan Malla vs Nepal Government* Case the Supreme Court ordered a revision to

[114] Nepal Law Commission, *supra* note 69.

[115] Mara Malagodi, *Challenges and Opportunities of Gender Equality Litigation in Nepal*, 16 INT. J. CONST. LAW 527 (2018).

the Statute of Limitations. In 2015, it was extended to six months. It was later amended to two years.

3. 3. Judicial Insites on Statute of Limitations on Rape cases

In the case of Sapana Pradhan Malla[116], the petitioner, in her petition to the Supreme Court, argued that the statutory limitation of 35 days, as prescribed in section 11 of the chapter on rape in the Muluki Ain of 2020, is insufficient. Malla contended that in numerous instances, victims failed to file complaints within this timeframe, and the survivors' rights as enshrined in the constitution and other laws were curtailed. She argued that on the other hand, the perpetrators were emboldened to commit crime as they could get away with it with the passage of 35 days, and this could potentially lead to impunity. Thus, to deter such egregious crimes and to uphold justice for women while safeguarding human rights, the statutory limitation for rape cases should be extended.

The government retorted that the constitution grants legislative authority to the parliament. The ultimate power to enact and modify laws rests within the purview of the parliament, and the issuance of a Mandamus writ is not intended to compel or pressure the parliament into legislating. The defendant urged the court to dismiss the petition, arguing that the 35-day statutory limitation does not result in situations devoid of sanction. The court had two important legal questions to resolve: Is the 35 days Statute of Limitation as per sec 11 of chapter of rape is substantially enough or not? Should the court issue a writ stating that the laws should be amended to increase the statute of limitation?

In answering the above questions, the court stated that rape is undoubtedly a grave crime and is prosecuted by the government in Nepal. Given that the government handles prosecution for rape offenses, the burden of proof rests with the government itself. However, the court noted that the legal system heavily relies on the confessions of the accused, leading to many acquittals due to lack of compelling evidence beyond reasonable doubt. Moreover, the requirement for victims to testify in court exposes them to fear and delays in filing cases. Many rape victims refrain from reporting due to unawareness of the 35-day statutory limitation. The court also recognized the advantage that the statute of limitations aids criminals.

Addressing the second question regarding the court's authority to issue directives to amend laws related to statutory limitations in rape statutes, the court asserted that the objective of criminal law is to uphold social order, with the state prosecuting serious criminal offenses. However, the prosecution requires sufficient time to gather evidence, and the inadequate statutory limitation period often hinders this process. Considering the 50-year history of prosecuting rape cases in Nepal, the Attorney General's Office should prioritize evidence collection within the current statutory limitation period. Additionally, the court emphasized that the constitution grants Nepali courts the authority to conduct judicial review and issue writ orders for amending statutory limitations in rape statutes.

[116] *Sapana Pradhan Mall et al V. Nepal Gov* (Dn. No: 8038)

The court therefore affirmed that the statute of limitations prescribed by sec 11 of the Muluki Ain, 2020 is insufficient. Therefore, the it directed government to frame laws to extend the statute of limitations in rape offences. This landmark petition marks the first instance in Nepal where the court has directed the government to amend the statutory limitation in rape statutes.

A writ petition filed by Jury Nepal[117], an NGO, represents a crucial milestone in the Supreme Court's jurisprudence concerning the Statute of Limitation. It also addresses the doctrine of tolling, referred to earlier, the precedent set emphasizes the importance of "legislative wisdom" in determining the Statute of Limitation, underscoring the role of lawmakers in such matters. In the writ petition, the petitioner argued that sexual offenses against women, including rape, constitute extremely grave, antisocial, and immoral crimes, universally condemned and punishable by law. Referring to Article 30 of the interim Constitution of Nepal, 2063, the petitioner highlighted the provision stating that no discrimination shall be tolerated against women and that any actions contrary to women's physical, mental, or other aspects shall be subject to punishment.

The petition further emphasized that according to the "Crime Victim Reach for Justice: A Brief Study Report, 2070" published by the Nepal Judicial Council, victims who file First Information Reports (FIRs) are often not given due consideration by investigating authorities due to gender stigma and fear of political party workers. Additionally, the petitioner reiterated that Section 11 of the rape chapter of the Muluki Ain, 1963, which stipulates a statute of limitation of 35 days for rape offenses, infringes upon the rights of victims to access justice and requires amendment. The petitioner also highlighted the discrepancy between the statute of limitation for bestiality, set at one year, and the 35-day limitation for rape, which is deemed insufficient and discriminatory against women and children. Moreover, the non-utilization of Section 40 of the court management chapter of the Muluki Ain, 1963, raises concerns about the lack of sanctions in rape cases. Section 40 provided that if a person required to file a lawsuit is under 16 years of age, the statute of limitation begins after reaching the age of 16. If the child dies before turning sixteen, the near relatives can file the case on behalf of the deceased, with the statute of limitation being 35 days after the child reaches sixteen. This provision applies to all cases involving children, and rejecting its applicability in heinous crimes like rape lacks justification.

The petitioner argued that Sections 11 and 40 have never been interpreted harmoniously, with Section 11 being mechanically interpreted, leading to the rejection of investigations and prosecutions after the 35-day period, particularly concerning child victims. Furthermore, the petition stressed that the Statute of Limitation for survivors who have not reached the legal age of majority can be tolled through the doctrine of tolling, as practiced in various countries. The petitioner urged the court to issue a mandamus order, asserting that the then 35-day Statute of Limitations on rape cases was inadequate and obstructed the pursuit of justice, advocating for its extension. They also requested the application of

[117] *Raju Prasad Chapagain V Nepal Govt* (Dn. No: 9547)

Section 40 of the Court Management Act, pertaining to rape offenses against children, thereby declaring Section 11 of the rape chapter void. Additionally, they sought directives for expediting amendments to align the Statute of Limitations with international standards, as it violates children's fundamental rights. Furthermore, they urged criminalization of actions such as refusing to register FIRs, causing unnecessary delays in investigations, and obstructing prosecution processes.

In its judgment, the court declined to apply Section 40 of the Court Management Act to rape cases, emphasizing its relevance solely to civil matters and equitable tolling. Additionally, the court dismissed the "Model Code for Post-Conflict Criminal Justice," stating its applicability to post-war criminal cases only. Consequently, the court refused to issue a mandamus order. Regarding the sufficiency of the 35-day limitations for rape cases, the court acknowledged the stigma faced by rape victims and the efforts of perpetrators to exploit limitation rights. Criticizing the government's lack of initiative, the court directed the extension of the Statute of Limitations.

Regarding the disparity between the limitations for bestiality and rape, the court highlighted the petitioner's argument but asserted that determining the statute of limitations is a matter of legislative wisdom. Thus, the court mandated the legislature to address this issue.

This precedent is important in a sense that in its precedent the court mentioned that in some cases the traditional way or the mechanical way of the interpretation of statute of limitations in rape offence is unjustified. In another case[118] a 14-year-old claimed that the defendant was his father's friend and he raped her under coercion and threat. She reiterated that because of the frequent rape she also gave birth to a female child. The defendant appealed to the Supreme Court that the criminal case be declared null and void on the grounds that it was set in motion after the Statute of Limitations of 35 days had expired. The defendant asked the court to set the cause of action date on the date when the rape was committed. The Supreme Court while adjudicating if the rape against the victim was committed or not mentioned in the judgement that the accused Amar Bahadur Bogati had confessed to raping the victim and also having sexual intercourse twice with the victim's consent. The court held that the defendant committed rape because as per the prevailing law, if a person has a sexual intercourse with a child below 16 with or without their consent, it amounts to rape.

While adjudicating the issue of whether the case was set into motion, the court held that the case was set into motion with the stipulated statute of limitations of 35 days because the defendant had confessed committing statutory rape and the FIR had been filed within 35 days of statute of limitations time. The Statute of Limitations cannot be calculated from the first rape committed date.

[118] *Amar Bahadur Bogati V Nepal Govt (Dn. No: 9623)*

The most important rationale given by the Supreme Court was that even if the defendant claims that the last rape committed by him was before 35 days, it still wouldn't make any substantial difference in the case. The court further reiterated that it need not be compulsory for the victim to file an FIR. There are instances where the victim cannot file FIR because of societal shaming, rape stigma, threat from the perpetrator, consciousness level and various societal and family situation and the police have to carry out investigation and file charge sheet. In such instance, the statute of limitations in heinous crime like rape should not be adhered to in a conservative way.

The full bench court continued that the issue of whether the crime was committed or not was more important than the question of whether the FIR was filed immediately or not. The court mentioned that there are different reasons for the FIR to not be filed on time. The geographical situation, the remoteness and the distance from the victim to the police station, the educational level of the society, societal situation, long term effect on the victim's life, undue threat and coercion in the victim's life etc may cause the late filing of the FIR. Therefore, heinous crimes like rape where the central issue is the woman's chastity, the filing date of the FIR should not be treated as the absolute indicator for aggravating and mitigating rape offences. Just because the FIR was not been filed in the right stipulated time doesn't mean that rape offence isn't established.

3.4. Society Divides: Should the existing limitations be eliminated?

A fundamental component of legal systems across the world for a considerable amount of time, the statute of limitations for criminal charges shields defendants from prosecutions based on out-of-date evidence and ensures the prompt administration of justice. But there has been increasing discussion in recent years about whether certain serious crimes—rape in particular—should be subject to similar temporal restrictions. Using Nepal as a case study, this section looks at the reasons for and against removing the statute of limitations in rape prosecutions.

Like in many other nations, Nepal has a deadline for filing allegations of rape. The revised Criminal Code Act of 2017[119] states that the maximum duration is three years. Although this legislation is a little improvement over the previous 35-day limit, campaigners and survivors who advocate for the total removal of such limits still have a lot more requests to make. The notion that rape cases have a statute of limitations is being viewed increasingly negatively for a number of reasons: the nature of trauma, which means that survivors of sexual assault often need time to process what happened to them and may not be ready to take legal action right away; social stigma, which stems from the fact that victims of sexual assault often experience strong social pressure to come forward quickly; power dynamics, which involve perpetrators having positions of authority or influence over their victims, potentially making it years before survivors feel safe enough to report

[119] Ministry of Law & Nepal Justice, *The National Penal (Code) Act, 2017*, (2017), https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Penal-Code-English-Revised-1.pdf.

the crime; and advancements in forensic technology, which cast doubt on the traditional justification for statutes of limitations.

Notwithstanding these defenses, there are several drawbacks to doing away with the statute of limitations. Trial integrity may be compromised over time if physical evidence deteriorates and witness memory is less trustworthy. The right of defendants to a fair trial may be violated by statutes of limitations that have been extended or removed since it is harder to build a strong defense as time goes on. The court's already meagre resources may be further depleted by looking into and prosecuting earlier cases, maybe at the cost of more recent instances. Some contend that eliminating deadlines would make false allegations more likely, even though data indicates that fraudulent complaints of rape are uncommon.

The discussion around the statute of limitations for rape is especially relevant in Nepal, where campaigners have launched well-publicized efforts to amend the legislation. Cases including 13-year-old Nirmala Pant[120], who was sexually assaulted and killed in 2018, provoked protests across the country and redoubled calls for legal change. The offenders were never prosecuted despite widespread indignation, in part because of delays in the investigation that caused the case to be past the statute of limitations. The Nepalese Supreme Court ruled in 2020[121] that the one-year statute of limitations for rape breaches basic rights protected by the constitution in response to similar instances and persistent activist pressure. Although specific reforms have not yet been put into effect, this judgment has opened the door for future legislative revisions.

The discussion in Nepal over the rape statute of limitations is representative of a larger worldwide trend. Numerous nations have previously acted to increase or do away with these deadlines. Some states in the US have eliminated their rape statutes of limitations[122], while others have greatly extended them. Some nations, including the UK, and New Zealand, do not have with the statute of limitations for severe sexual offenses. When rape is part of a widespread or systematic attack, it is considered a crime against humanity under international criminal law, as codified in the Rome Statute of the International Criminal Court[123], with no statute of limitations. These global experiences serve as useful role models for nations contemplating comparable changes, such as Nepal.

The statute of limitations for rape was removed, which signifies a dramatic change in the way that judicial systems view sexual assault. Despite the difficulties, there are strong reasons to support this move, especially in light of our growing understanding of trauma, the consequences of sexual assault on survivors over time, and the delayed sharing of

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[120] Shiva Rijal, *Political Demonstrations, Nepali Youths and the Politics of Mourning: A Semiotic Analysis*, 6 SCH. J. ARTS HUMANIT. 28 (2024).

[121] Sapana Pradhan Mall et al V. Nepal Gov (Dn. No: 8038)

[122] Lawteryx Editor, *Sexual Assault Statute Of Limitations (Criminal & Civil) By State*, LAWTERYX (2021), https://www.lawteryx.com/blog/criminal-law/statute-limitations-sexual-assault/ (last visited Apr 10, 2024).

[123]

information. The way forward for Nepal and other nations dealing with this issue probably entails a careful balance of conflicting interests. All measures must be supported by larger initiatives to deal with the underlying causes of sexual assault, enhance the quality of the investigation process, and offer all-encompassing assistance to victims.

3.5. Analysis and Innovation for Change

Advocating for legal changes to statutes of limitations in rape cases represents a crucial innovation for addressing systemic barriers to justice and accountability for survivors of sexual violence. Here we explore the feminist rationale behind such advocacy, emphasizing the importance of recognizing power dynamics, validating survivor experiences, promoting accountability, empowering survivors, and fostering structural and systemic change within the legal system.

Firstly, analyses of sexual violence highlight the inherent power imbalances, gender inequality, and social norms that contribute to the perpetration and silencing of rape. Statutes of limitations can exacerbate these power dynamics by imposing arbitrary time constraints that prioritize the interests of perpetrators over the rights and needs of survivors. By advocating for changes to statutes of limitations, we must aim to challenge systems of oppression that perpetuate sexual violence and address underlying inequalities in access to justice.

Secondly, changing statutes of limitations in rape cases validates survivor experiences by affirming the significance of their trauma and the complexities of seeking justice in a hostile legal environment. Extending or eliminating statutes of limitations acknowledges the long-lasting impact of sexual violence on survivors' lives and recognizes their right to pursue legal recourse at their own pace, without arbitrary time constraints hindering their access to justice.

Furthermore, the society must emphasize the importance of holding perpetrators of sexual violence accountable for their actions and preventing impunity for crimes of gender-based violence. Changes to statutes of limitations enable survivors to pursue legal redress and seek accountability for perpetrators, promoting a culture of deterrence and prevention while sending a clear message that sexual violence will not be tolerated or excused. Empowering survivors to come forward and seek justice is another central aspect in addressing sexual violence. Changes to statutes of limitations provide survivors with greater flexibility and autonomy in deciding when and how to pursue legal action against their perpetrators, removing barriers to accessing the legal system and facilitating survivors' agency, self-determination, and healing journey.

Legal changes to statutes of limitations are part of broader efforts to dismantle systems of oppression, challenge rape culture, and promote gender equality and social justice. These changes signal a commitment to structural and systemic change within the legal system, addressing institutional biases and discriminatory practices that disproportionately affect survivors of sexual violence, particularly marginalized and underserved communities.

To sum up, in Nepal's context, the society itself demands changes to temporal restrictions in the name of statutes of limitations on rape. Following a spate of hi-profile cases, it seeks to promote justice, empowerment, and systemic change for survivors.[124] If the lawmakers further extend or eliminate such restrictions, they can acknowledge survivors' experiences, hold perpetrators to account, and send a message to the world that the country is committed to ending impunity for perpetrators of sexual crimes. These changes represent a step towards creating a more just, equitable, and survivor-centred legal system.

4. Conclusion and Suggestions

In the field of justice, time frequently has two sides. It acts as a mechanism for accountability on the one hand, making sure that those who commit crimes are held accountable for their deeds. However, it may also act as a roadblock, making it difficult for victims of horrible crimes like rape to get justice.

The statute of limitations for rape cases in Nepal is a striking example of this contradiction, since the limited time frame for reporting rape incidents presents formidable obstacles for victims seeking redress. Although there is a strong lobbying for the repeal of this act, a more thorough study shows that doing so might not be enough to ensure that people have better access to the legal system. By analyzing the intricacies associated with this matter and contrasting it with perspectives from India's experience, we disentangle the complicated web of difficulties and suggest comprehensive remedies to create a fairer community. The statute of limitations, a legal construct embedded in the fabric of justice systems worldwide, delineates the temporal boundaries within which a victim must initiate legal proceedings. The statute of limitations for rape charges in Nepal places a very strict deadline on victims, compelling them to come forward with their reports within a year after the crime—previously, the term was just 35 days.

For survivors, this accelerated timeline creates enormous obstacles, making the already difficult task of pursuing justice after trauma much more difficult. The psychological, social, and practical barriers that victims frequently face make it difficult for them to report crimes on time. The long-lasting stigma associated with rape envelops survivors in a dread of rejection, censure, or reprisals. The shock of the event itself can paralyse survivors, leaving them open to manipulation and intimidation by those who use threats to silence their victims. Navigating the maze of legal processes within the constrained timeline is even more difficult for child victims since they could not be considered legal adults until they reach a specific age, which further shortens the already narrow window of opportunity for pursuing justice.

Moreover, the statute of limitations inadvertently grants perpetrators a cloak of impunity, emboldening them to evade accountability by exploiting the temporal constraints imposed

[124] *Demanding justice in Nepal: How statutes of limitations impede access to justice for survivors of sexual violence*, Equality Now, A just World for Women and Girls,
available at María Alejandra Gómez Duque, *Towards a Legal Reform of Rape Laws under International Human Rights Law*, 22 GEORGET. J. GEND. LAW 489 (2021). (last visited 2 Sep. 24)

on survivors. With the narrow window for reporting, many survivors find themselves excluded from the realm of legal recourse, allowing perpetrators to escape unscathed, perpetuating a cycle of injustice and amplifying the systemic failures of the justice system.

As discussed above, for instance India, a neighbor that has done away with this time restriction on rape prosecutions, in order to have a fuller understanding of the ramifications of Nepal's statute of limitations. But the Indian example also highlights the inherent drawbacks of depending only on the statute of limitations being lifted in order to bring about justice.

Despite the absence of temporal constraints, India grapples with systemic challenges that undermine the effective prosecution of rape cases. The dismal conviction rates bear testament to the multifaceted nature of the obstacles embedded within the justice system, ranging from delays in investigations and inadequate evidence collection to judicial backlog. Moreover, both Nepal and India share a common adversary in the form of deeply entrenched patriarchal norms that permeate societal attitudes towards sexual violence.

These norms discourage survivors from pursuing justice and promote a culture of silence and complicity by fostering a victim-blaming mentality and a cycle of impunity. As mentioned earlier, Nepal's severe statute of limitations has drawn criticism from international organizations like the CEDAW Committee and the Special Rapporteur on Violence against Women because it contrasts sharply with current human rights norms. Nepal is in the process of addressing this issue, driven by the combined voice of politicians, activists, and attorneys. Advocates are calling for the repeal of the limited statute of limitations, elevating the voices of survivors, and holding the judicial system accountable through activism, rallies, and court petitions. A possible change towards a more survivor-centric approach to justice is being signalled by legislative efforts in the Nepali Parliament that seek to prolong the reporting time for rape cases. Finally, society, legal professionals and politicians needs to understand that eliminating the statute of limitations on rape cases is a critical first step toward improving access to justice survivors for sexual abuse. But doing so does not guarantee that structural obstacles to justice will be eradicated promptly.

To put an end to violence against women and the injustice against survivors, the government needs to adopt a more holistic approach that includes awareness campaigns, legislative changes, and survivor-centric policies. As the system is deeply submerged in patriarchy and impunity, it is urgent to hold offenders accountable for their crimes. Similarly, survivors need to get the freedom to recover their dignity and agency. This research suggests following recommendations for the government to change existing situations:

- The prevailing laws related to the statute of limitations for reporting rape cases should be either repealed or the temporal restrictions they impose should be extended significantly to allow survivors more time to seek justice. This is

important to make sure that survivors have time to process their trauma and muster courage to seek justice from the legal system.

- Secure enough funds so that rape survivors can avail free services such as medical help, legal support and and psychological counselling.
- Create dedicated teams trained to handle rape cases with professionalism and skill. They should include women personnel to create a supportive environment for survivors during both the reporting and investigation processes.
- Invest in enhancing the reliability of forensic labs and training law enforcement personnel in evidence collection to make it free of errors, and ensure prosecution.
- Provide training judges, prosecutors, and police officers working at the district as well as federal level so that they can manage rape cases and assessing psychological impacts of sexual violence. This training should also look at different barriers that prevent survivors from getting justice.
- Launch a national initiative to show the public the realities of rape and why survivors need community support. These campaigns should aim at addressing stigma, promoting reporting, and fostering a culture of zero tolerance towards perpetrators of sexual crimes.
- Revisit and bolster legal provisions related to rape to ensure hefty penalties for convicts. This should also include measures that give priority to rape cases in the court to avoid delays that can affect the survivors' chances of getting justice.
- Modify legal procedures to make them more compatible with the needs of the survivors. For example, permit in-camera trials (which are not open to the public), support people to testify, and use video testimony to reduce the stress witnesses feel appearing before the judges.