BACKGROUND

Sexual violence is one of the most extensive forms of human rights violations in the world. Though a majority of survivors are women and girls, sexual violence affects women, men, girls, boys and gender minorities all over the world irrespective of their age, physical ability, sexual orientation or gender identity. Sexual violence has grown as a critical problem, globally.

Nepal Government has exhibited several efforts to minimize and criminalize sexual and gender-based violence by framing laws and policies against sexual violence on different occasions.

As per one of the Fact Sheets published by Nepal Police Headquarters, in cases related to the sexual violence, 78.5% of the accused/offenders were acquaintances and 62.4% of the victims were girls. Girls aged between 11 to 16 years were highest among the number of victims of sexual violence and child marriage cases.

In cases related to the sexual violence

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- 62.4% of the victims were girls

Source: Nepal Police Headquarters

Lack of effective implementation of laws regarding sexual violence is one of the perpetual problems that have been persistently preventing the effective justice delivery system in Nepal. Moreover, gaps in the legal provisions have been considered as one of the key challenges for any cases of sexual violence to stand strong and result in convictions in the court of law. This policy paper suggests reforms to the relevant sexual violence laws in Nepal to address these concerns. The specific legislations included within the scope of this policy paper are the National Criminal Code 2017, the Crime Victim Protection Act 2018, the Sexual Harassment at the Workplace (Prevention) Act 2014 and the Evidence Act 1974.

CHILDREN AND SEXUAL VIOLENCE

Sexual violence means any act of sexual nature done without consent. It confines the act that range from verbal harassment to penetration. It includes rape, sexual assault, childhood sexual abuse and exploitation, sexual harassment etc.

1. 3 Years Fact Sheet on Gender-Based Violence, FY 2074/75 to 2076/77 (July 2017 to July 2020), Police Headquarters, Crime Investigation Department, Women, Children and Senior Citizens Service Directorate, Naxal, Kathmandu.
Child sexual abuse is an act where a child is forced or encouraged to take part in sexual activity. Worldwide, about one in ten girls have been forced to engage in sex or perform other sexual acts. Child sexual abuse is experienced in neighborhoods, schools, streets, home all over Nepal. As sex is considered a taboo in the Nepalese society only some cases are reported and majority of the abuse are unreported.

According to Nepal Police data of last three fiscal years (2019-2020, 2020-2021, 2021-2022) the statistical representation of registered rape cases is 6906, attempt to rape is 2208, number of unnatural sex is 87, child sexual abuse is 724 and murder after rape is 17.

### Registration of Cases at Nepal Police

<table>
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<tr>
<th>S.No.</th>
<th>Types of Violence</th>
<th>2019-2020</th>
<th>2020-2021</th>
<th>2021-2022</th>
<th>Total</th>
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<tr>
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<td>Rape</td>
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<td>2532</td>
<td>6906</td>
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<tr>
<td>2</td>
<td>Attempt to rape</td>
<td>786</td>
<td>687</td>
<td>735</td>
<td>2208</td>
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<tr>
<td>3</td>
<td>Unnatural Sex</td>
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<td>87</td>
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<td>Child Sexual Abuse</td>
<td>211</td>
<td>232</td>
<td>281</td>
<td>724</td>
</tr>
<tr>
<td>5</td>
<td>Murder after Rape</td>
<td>11</td>
<td>2</td>
<td>4</td>
<td>17</td>
</tr>
</tbody>
</table>

Today is the world of technology and digitalization therefore the crime rate through digital means has also increased. A survey was conducted by ECPAT Luxemburg relating to online sexual abuse and exploitation of children. According to this survey, out of total school going children, who use internet, 13.7 percent are the victims of online abuse. As per the report conducted by CWIN in 2020 regarding online sexual exploitation of children, out of 1,714 respondents, 457 people (26.66 per cent) were found to have met unknown persons online. Of them, 154 (33 per cent) had met such unknown persons physically. All of them, who went to meet them, were sexually exploited in some form or the other.

Out of 1,714 respondents, 457 people (26.66%) were found to have met unknown persons online.

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4. Data collected from Women, Children and Senior Citizens Directorate, Nepal Police
5. Rastriya Samachar Samiti, children becoming victims of sexual exploitation due to internet misuse, the Himalayan times, February 11, 2021
6. Rastriya Samachar samiti, children becoming victims of sexual exploitation due to internet misuse, the Himalayan times, February 11, 2021
NEPALESE LEGAL PROVISIONS AGAINST SEXUAL ABUSE ON CHILDREN

Nepal has made legislation related to sexual abuse on children. According to the Constitution of Nepal, no child should be subjected to physical or any other forms of torture in home, school or other places and situation whatsoever.  

The National Civil Code, 2017 also has certain provision regarding sexual abuse of children. According to the Code if the parental authority neglects, disregards or abuses the minor time to time and engages a minor in immoral or sexual profession then their parental authority is restricted.

The National Penal Code, 2017 which regulates criminal law in Nepal has certain provision regarding sexual abuse of children. It prohibits committing any sexual intercourse with a woman without consent and prohibits any sexual intercourse of child below 18 even with consent. Similarly, it has also laid down the punishment on committing such action. If a person rapes a girl below 18 years of age, woman with disability and woman above 70 years of age, he will be imprisoned for life, imprisonment for a term of 18 to 20 years if a girl is 10 years or above 10 years of age but below 14 years of age, imprisonment for a term of 12 to 14 years of a girl is 14 years or above 14 years of age but below 16 years, imprisonment for a term of 10 to 12 years if a girl is 16 years or above 16 years of age but below 18 years and imprisonment for a term of 7 to 10 years if a girl is 18 years or above 18 years of age.

The National Penal Code has also prohibited the child sexual abuse. an act will be considered as child sexual abuse when the child is taken to any lonely place in an unusual manner, if someone holds or touches them in any sexual organ along with that if someone gets their sexual organ held or touched by the child and makes any form of unusual sexual behavior with a child with the intention of having sexual intercourse. The liability to be held by the guilty is imprisonment of 3 years and a fine of rupees thirty thousand.

Nepal has promulgated a separate special act i.e., “The Act Relating to Children, 2075” with the objective of protecting the best interest of the children. According to the act, if someone shows, or causes to show, him or her an obscene picture, audio visual recording or other material of similar kind or display, or cause to display, such expression or gesture that reflects obscene or sexual conduct or behavior to him or her or displays, or causes to display, child pornography, distributes store or use any actual or fictitious obscene picture or audio-visual material of him or her, proposes, lures, coerces or threatens him or her for sexual activity, uses him or her in the production of an obscene act and material, touches, kisses, holds sensitive parts of body, embraces him or her with sexual intent or

7. Article 39(7) of the Constitution of Nepal, 2072
8. The National Civil Code, 2074 §132(1) (b) and (c) (Nepal)
9. The National Penal Code, 2074 §219(2), (Nepal)
10. The National Penal Code, 2074 §219(3), (Nepal)
11. The National Penal Code, 2074 §225, (Nepal)
causes him or her to touch or hold sensitive parts of their own body or body of another person or renders him or her unconscious with sexual intent or display, or causes him or her to display sexual organs, use, or cause to use, him or her for stimulating sexual lust or sexual excitement, use, or cause to use, him or her for the purpose of sexual gratification, engages, or causes to engage, in child sexual exploitation, uses, or causes to use, him or her with the intent of providing sexual services, use, or cause to use, him or her with the intent of engaging in sexual abuse and uses him or her in prostitution or other sexual work then he or she has committed child sexual abuse. The minimum punishment awarded to the person performing the act of child sexual abuse is fine up to 75,000 and imprisonment of 3 years and the maximum punishment is fine up to 150,000 and imprisonment of 15 years.

INTERNATIONAL LEGAL INSTRUMENTS ON SEXUAL ABUSE AGAINST CHILDREN

The Convention on the Rights of the Child (CRC) was adopted by Nepal for the protection and fulfilment of rights of children. This convention has mentioned that all the state parties should take all the necessary measures to protect the child from all form of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment including sexual abuse while in the care or parent(s), guardian(s) or any other person taking care of the child. Similarly it also mentions that a child should be protected from all forms of sexual abuse. The CRC has obligated the state parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

The second optional protocol of CRC i.e., “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000” has prohibited the act of sale of children, child prostitution and child pornography. The protocol has also defined child prostitution as, the use of child in sexual activities for remuneration or any other form of consideration. Similarly, it has defined child pornography as, any representation by whatever means of the child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

12. The Act relating to Children, 2075 §66(3), (Nepal)
13. The Act relating to Children, 2075 §72 (3) (b), (c), (g), (h), (Nepal)
LEGAL PROVISIONS IN FOREIGN COUNTRIES AGAINST CHILD SEXUAL ABUSE

The United States of America (USA)

The United States of America is one of the leading countries of the world. Unless there are specific circumstances, federal laws normally do not apply to cases of child sexual abuse that take place entirely inside a single state. As a result, State or Municipal authorities often handle these cases and State law is used to prosecute offenders. However, if a child is sexually abused on federal property, federal law may be used to prosecute the offender. Military bases, Indian reservations, and other government-owned lands or properties are examples of federal lands. Offenders found guilty of sexually abusing a child are subject to penalties and imprisonment under federal law. Additionally, if the offense involved aggravated circumstances, such as the use of force or threats, the infliction of serious physical harm or death, or the kidnapping of a child while committing child sexual abuse, the offender may be subject to heavier punishments. Child pornography is illegal in the USA. Production, distribution, receiving, and ownership of child pornographic images using or having an impact on any means or facilities of international or domestic trade are all prohibited by federal law. It is specifically prohibited to convince, encourage, seduce, or coerce a minor to participate in sexually explicit behavior in order to produce photographic representations of that behavior. Federal law also allows for prosecution of anyone who attempts or conspires to commit a child pornography offense. Child pornography is a serious offense, and those found guilty are subject to harsh statutory penalties.

India

Sexual abuse of a child is a deep-rooted problem in India. The Protection of Children from Sexual Offenses (POCSO) Act in 2012 was passed to safeguard children from crimes involving sexual assault, sexual harassment, and pornography and to establish Special Courts for the trial of such crimes and occurrences related to them. The POCSO Act describes a wide range of sexual offenses, such as exhibitionism, child pornography, employing minors for pornography, complete and partial penetration, non-penetrative sexual assault, and stalking of children. The legislation shields kids from abuse that involves either physical contact

20. United States Code, Section 2251, (USA)
21. The Protection of Children from Sexual Offenses (POCSO) Act, 2012 (India)
or no contact at all. The POCSO statute also includes provisions for penalties for making a false report or spreading misleading information. According to the seriousness of the offense, the Act calls for imprisonment for a time that must not be less than 10 years but may run as long as life, as well as a fine, as a punishment for severe penetrative sexual assault. The Act further specifies that storing pornographic material involving children is punishable by imprisonment of either kind, up to three years in length, a fine, or both. Additionally, it imposes penalties on those who traffic youngsters for sex.

**Australia**

Child abuse in Australia includes sexual abuse as well, which is defined under the Family Law Act, 1975. Under the act an assault, including the sexual assault of a child; or a person involving a child in a sexual activity with that first person or another person in which the child is used directly, or indirectly as a sexual object for the first person or another person where there is unequal power in the relationship between the child and the first person; or causing a child to suffer serious psychological harm, including, but not limited to, when that harm is caused by the child being subject to, or exposed to family violence; or serious neglect of a child is defined as abuse of a child.  

**South Africa**

The South African Constitution addresses the rights of children and affords them specific protection. According to the Constitution “Every child has the right to be protected from maltreatment, neglect, abuse and/or degradation”. A separate criminal justice system for children is established by the Child Justice Act, 2010 and any child who violates the law will be prosecuted in accordance with its provisions, including those who engage in sexting, which is considered child pornography, or acts of cyberbullying that meet the criteria for a specific crime. The Films and Publication Act 65 of 1996 addresses issues related to child pornography, such as texting of information having child pornographic content South Africa. For first-time offenders, the minimum term is 10 years in jail, followed by 15 years for repeat offenders and 20 years for third-time offenders. In some cases, people who commit rape might receive a life sentence, which is equivalent to 25 years in prison.

### SUGGESTED REFORMS IN THE SEXUAL VIOLENCE LAWS OF NEPAL

**National Criminal Code 2017**

**Ss 2 of S 219 of Chapter on Sexual Offences defines Rape as:** If anyone has sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent, the man shall be considered to commit rape on such woman or girl child.

**Commentary:**

Ss 2 of S 219 does not include within its scope the rape of sexual and gender minorities and a boy below 18 years of age. This means when the crime of rape is perpetrated to any LGBTIQA people by anyone, or against a boy below 18 years by anyone, the case remains unprosecuted. Hence, the definition of rape should be amended to cover and envision sexual violence towards minority groups.

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22. The Family Law Act, 1975 Section 4(1), (Australia)
23. The Constitution of Republic of South Africa, 1996 Article 28, cl (1) sub-cl (d)
and boy child. The term LGBTIQA and boy child should be added after “any women” or “any women” could be replaced with “anyone” in Ss 2 of S 219.

Recent news reports from Jhapa District of Nepal highlight the case of a 30-year-old man who was raped by two persons. The accused were later released after some inquiries. Similarly, in a different incident of Dhanusha District, a 5-year-old boy was raped and brutally killed by his 22-year-old relative. Also, as per the fact sheet published by Nepal Police, 87 cases of unnatural sex were reported in last 3 years. These cases ought to be prosecuted under rape, which requires amendment of the rape definition under s. 219.

*International Human Rights Standards:* The Model Law on Rape drafted by the United Nations Special Rapporteur on Sexual Violence notes that “[c]riminal provisions on rape should cover and protect all persons without any discrimination; men, boys and gender diverse persons should be covered. This does not change the fact that rape predominantly affects women and girls.”

Ss 2 (c) of S 219 states: “The penetration of penis into anus or mouth, penetration of penis, to any extent, into anus, mouth or vagina, insertion of any object other than penis into vagina shall also be considered to be rape.”

**Commentary:**

This section defines rape to only include the penetration of penis in the vagina, mouth and anus but foreign object in the vagina only. The insertion of objects and fingers in the anus should also be included within the definition of rape under ss 2(c).

Similarly, the term foreign object is not specifically defined in the clause, which means that for example, insertion of a finger into the vagina (as happened in an incident in Gorkha where a 70-year-old grandfather inserted a finger into the vagina of a 13-year-old granddaughter) may not be included within the scope of the clause depending on interpretation by prosecutors and courts.

Section 2(c) of s. 219 should thus be amended to clearly state that the insertion of any bodily part or object, however slight, into either the vagina or anus, should be considered as rape, if it is of a sexual nature.

*International Human Rights Standards:* The Model Law on Rape drafted by the United Nations Special Rapporteur on Sexual Violence notes that: “[c]riminal law provisions on rape should explicitly include all types of penetration of a sexual nature (vaginal, anal or oral), however slight, by any bodily part or an object.”

For instance, in the South Asian region, laws in Bhutan, India, Maldives and Sri Lanka define rape to cover all forms of sexual penetration within the scope of the offence.

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25. Five years old boy raped, brutally killed in Dhanusha - myRepublica - The New York Times Partner, Latest news of Nepal in English, Latest News Articles (nagariknetwork.com)
26. 3 Years Fact Sheet on Gender-Based Violence, FY 2074/75 to 2076/77 (July 2017 to July 2020), Police Headquarters, Crime Investigation Department, Women, Children and Senior Citizens Service Directorate, Naxal, Kathmandu.
Section 219, Ss 2 (b) defines that the consent taken during the unsoundness of mind is not considered consent.

Commentary:

The term “unsoundness of mind” is equivocal as to what exactly unsoundness means. There should be a clear demarcation between the consent taken from a person who is psycho-socially or intellectually disabled and the consent taken from the person who has been intoxicated with alcohol or drugs. For psycho-socially or intellectually disabled persons, it should not be taken to mean in all cases either that a person such a disability will always be incapable of consenting to sex or that a person with a psycho-social/intellectual disability cannot act as a competent witness in their own case. Each aspect should be properly investigated at the time, with appropriate support as necessary, and based on the person's individual capacities at the time.

Further, since a person is unable to provide consent when incapacitated by drugs or alcohol, the clause should clearly state that consent taken from a person who is unconscious or intoxicated should not be considered as consent for the purposes of the section. The provision should also delineate other instances where a person is incapable of giving consent, such as when coercive circumstances are present.

International Human Rights Standards: The CEDAW Committee in the case of Karen Tayag Vertido v. The Philippines, recommended that the state should enact a definition of rape, which:

a. requires the existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the survivor was consenting; or

b. requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.

Laws relating to sexual violence should thus recognise common situations in which the victim is incapable of providing consent to sex, as such situations could either be considered as ‘coercive circumstances’ or instances where genuine consent is impossible as required by CEDAW jurisprudence.

Section 219, Ss 4 states that if a husband rapes a wife under a marital relation, the husband would be criminalized with imprisonment up to 5 years.

Commentary:

The punishment for marital rape in the existing law is not enough and should be aggravated. Even though the punishment for marital rape was increased gradually from 6 months to 3 years and now up to 5 years, the punishment has to be increased considering the cases that are filed in the court. For example: Recently, FWLD supported the case of marital rape where the district court of Makwanpur rendered a punishment of 1 year to the husband who raped his wife, physically battered her and took her savings forcefully from her, but the decision reads that this case is of a severe nature but the punishment the court rendered was minimum which is very unfortunate.

Additionally the court also established their marriage in this case but in fact the husband was already married with his first wife which makes his second marriage void as per National criminal code 2017 but instead the court established their marital relation and criminalized the husband with just 1 year which is completely unacceptable, unfair and impaired judgment.


32. Jit Kumari Pangeni V Nepal Government, 2008 (This case was filed in initiation of FWLD).
Thus, the punishment for marital rape should be increased to make sure it is on par with the penalty applicable for rape of women above the age of 18. Having a disproportionately low penalty for marital rape in the law promotes the impression that sexual violence in intimate partner settings is not as serious a crime whereas the crime is the same only exacerbated by breach of trust by a person who purports to be in a special relationship with the victim.

**International Human Rights Standards:** In 2014, while reviewing Nepal’s compliance with the International Covenant on Civil and Political Rights, the Human Rights Committee expressed concern at the “disproportionately low penalties for marital rape”.

Section 224 of the National Criminal Code prohibits Sexual Harassment and defines different acts that would amount to sexual harassment. Section 224, ss 2 states that: “A person shall be considered to commit sexual harassment if the person holds or touches or attempts to touches the sensitive organ of, or opens or attempts to open undergarments of, or obstructs or hinders in any way the wearing or removing of undergarments of, or takes to any lonely place in an unusual manner, or gets his or her sexual organ to be touched or held by, or uses vulgar or similar other words, spoken or written or by gesture or by way of electronic medium, or shows any pornography to, or teases or annoys with sexual motive, or behaves in an unusual, undesirable or indecent manner with, a person who is not his wife or her husband, without her or his consent, with the motive of having sexual intercourse with her or him.”

**Commentary:**

Some of the acts defined under this section are equivocal and ambiguous. For example: what would be the definition of undergarments? Or what exactly accounts to undergarments? What indicators would be permissive of a person who holds another person with an intention of having sexual intercourse? There is no specification that defines sensitive organ which makes it subjective from person to person. A person might feel harassed if someone touches his/her other body parts such as neck or shoulders. Thus the action of any kind which is unwelcoming should be defined as sexual harassment.

Similarly the term “a person who is not his wife or her husband” should be repealed as it envisions that the action of sexual harassment cannot occur in a marital relation. In fact a husband or wife might feel sexually harassed irrespective of their marital relation if any action is inflicted at any occasions. For instance: A (the wife) might feel sexually harassed if B (the husband) commits all kinds of action described under section 224. Thus, the term “a person who is not his wife or her husband” should be repealed.

The grounds of sexual violence under this section should not be defined simply on the basis of the act, but the perspective of person subjected to the act should also be considered. In many countries, the definition of sexual harassment takes into the account the viewpoint of the victim by requiring that the act must be “unwelcome” irrespective of the motive of the perpetrator. The requirement in s. 224 for the perpetrator to have a “motive of having sexual intercourse” is very ambiguous and difficult to prove in court. Further, even if the perpetrator himself did not have the motive to have sexual intercourse, the victim may feel harassed and thus, the motive requirement should be removed. Instead, the definition could state that it only includes acts of a “sexual nature” to ensure that non-sexual acts do not get covered within the scope of the provision. These equivocal provisions need a reformation and revision.

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33. CCPR/C/NPL/CO/2, 15 April 2014.
**International Human Rights Standards:** The Committee on the Elimination of Discrimination against Women, in General Recommendation No. 19, defines sexual harassment as follows: “Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions”.  

Section 225 of the National Criminal Code provisions for child sexual abuse has created further confusion in the prosecution of the crime of rape. This provision overlaps with S.34 of the Criminal Code that provides for attempt to rape, and commercial sexual exploitation and child sexual harassment provided by S.66 (3) of the Act relating to Children, 2018. In practice, this provision has turned out to be a bargaining ground to impose a lower penalty during the prosecution of cases of child sexual abuse.

**Commentary:**

In cases of attempt to rape of a child which accounts for a greater gravity/severity than molestation, this provision has put an attempt to rape in the basket of molestation, with a lower penalty being applicable. Hence, the law should clearly state that where there is enough evidence to charge rape, attempt to rape or other offences which carry a graver penalty than that applicable for child sexual abuse, those charges should be strongly pursued rather than the lesser charge of child sexual abuse.

Section 226 of the National Criminal Code provisions for unnatural sex which states that no one should perpetrate unnatural sex to anyone without one’s consent.

**Commentary:**

The term “unnatural sex” has not been clearly defined in the clause and secondly the term itself is disparaging because the act of “unnatural sex” could be natural to the other people and vice versa. Section 226 should be repealed and all cases of sexual intercourse without consent (irrespective of the sex or gender of the victim) should be covered as rape under section 219.

Section 229 of the National Criminal Code Act has set the time limitation of 3 years to file the incident of rape, sexual harassment, child sexual abuse and unnatural sex in case of children below 18 years of age. Such time limitation starts from the date such children complete the 18 years of age. If such offense is committed against a person with disability, mental retardation, or person over 70 years of age, the time limitation to file the incident is within 3 years from the date of commission of the offense and 2 years from date of commission of such offense in the case of others.

**Commentary:**

The two-year time limitation and three-years in special cases is very little to file the offense relating to sexual violence and should be increased because there are hundreds of conflict related sexual violence cases perpetrated during the 10 years Maoist insurgency, whose time limitation has crossed to file their case. For example: as per the recent news published in “The Record”, after the formation of Truth and Reconciliation Commission (TRC), nearly 64,000 cases were lodged at the TRC, our of which 310 cases are regarding sexual violence.

Similarly, if sexual violence or rape is perpetrated against a woman or girl child and the victim fails to report the case within the time limitation due to several reasons like infliction of threat, undue influence or allurement, or even stigma surrounding rape, fear of familial and community backlash or lack of knowledge about the criminal justice system processes, the one year time limitation set forth by the Act goes irrelevant and ineffective in such cases. For example: The rape case of Nirmala

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34. United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), General Recommendation No. 19, Violence against Women, paragraph 18, XI session, 1992
35. The lasting scars of war: sexual violence during the conflict - The Record (recordnepal.com)
Panta (2018) has already crossed the time limitation to file the case, but if at any time the perpetrator is identified, then what should be the status of the case? How should the case be registered? Such loophole in the law multiplies the already prevalent challenges regarding the effective implementation of Sexual violence laws.

**International Human Rights Standards:** The CEDAW Committee has noted that this statute of limitations under Nepali law “fails to take into account the stigma that women and girls face when reporting cases of sexual and gender-based crimes and, therefore, fosters impunity for such crimes” and recommended that Nepal “repeal the statute of limitations provision on the registration of cases of sexual violence in all contexts to ensure effective access for women to justice for the crime of rape and other sexual offences”.

*Section 6 of the Crime Victim Protection Act 2018* states that the victim shall have the right to privacy in the course of investigation, enquiry, prosecution and court proceedings of certain crimes, including rape and sexual harassment.

**Commentary:**

Despite this provision, in practice, the confidentiality of survivors of rape is hardly maintained. For example: The Nirmala Panta case and Bhagirathi Bhatta case caused a huge sensation in the Nepali media, and the media unveiled all the private information like the victim’s home address, business and other irrelevant affairs. Thus the clause of confidentiality in the crime of sexual violence should be strictly maintained and implemented.

*Section 14 of the Sexual Harassment at Workplace (Prevention) Act 2014* has delegated the authority of initiating proceeding and adjudication of complaints filed under this Act to the Chief District Officer of the concerned district. However, analyzing the sensitivity of the case, the cases of workplace sexual harassment should be filed in the Judiciary not in the quasi judicial bodies where they more overwhelmed with administrative works.

*Section 24 of the Evidence Act, 1974* states that the Court may take into account facts related to the character of the party if it has to decide on the character of the party to the case.

**Commentary:**

Though s. 24 does not specifically allow the introduction of character evidence relating to the victim in rape cases, in practice, defence lawyers often introduce evidence of the past sexual history of the victim (including by relying on the results of the two-finger test) in order to demean the character of the victim, even when such evidence is not relevant to whether the victim consented to the specific act of sexual intercourse in the case. This is despite the direction of the Supreme Court in the case of Sapana Pradhan Malla (FWLD) v. HMG, which held that the survivor’s occupation and character should not be considered while determining punishment in rape cases. In line with the Supreme Court decision, the Crime Victim Protection Act 2018 should be amended to specifically clarify that in rape cases, it is prohibited for defence lawyers to introduce comments or questions or so-called evidence alleging the victim has an “immoral” character or questions about the previous sexual history of the victim that have nothing to do with whether there was consent in the case under examination and have no other probative value. This would ensure that the dignity of the survivor is protected during the rape trial.

International Human Rights Standards: The guidance on drafting effective legislation on sexual violence issued by the UN Women Virtual Knowledge Centre to End Violence Against Women and Girls provide that states should prohibit introduction of a survivor’s sexual history as evidence in sexual violence proceedings.\(^{37}\)

For instance, Indian law has a specific provision prohibiting the defence from adducing evidence or asking questions in cross-examination relating to the general immoral character, or previous sexual experience, of the victim while proving consent or the quality of such consent.\(^{38}\)

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**OUR CONCERN**

- The Model rape law submitted by the United Nations Special Rapporteur on Violence Against Women to the Human Rights Council should be considered while amending or reforming the laws related sexual violence.\(^{39}\) The Model rape law projects the diverse dimensions of the crime of rape like consent, age of consent and capability of giving genuine consent, presumed lack of consent, no time limitation.
- The gap in the above mentioned clauses should be reformed as per international human rights standards.
- The punishment for marital rape in the National Criminal Code 2017 is not enough and should be increased so that it is at least the same as the penalty applicable for other forms of rape.
- The upcoming laws should cover the sexual exploitation and violence inflicted on women and girls working in entertainment sectors, and in commercial sexual exploitation.
- The survivors of conflict related sexual violence are classified as “victims” as per The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014). However they are not formally recognized as the “victims of the conflict”. Thus it is necessary to advocate and lobby to recognize the survivors of CRSV (Conflict related sexual violence) in the upcoming laws, policies, National Action Plan (NAP) Phase II.
- The Privacy of rape survivors should be strictly maintained to protect their right to dignified life.
- The one-year time limitation is very low with regard to the nature and sensitivity of the cases related to sexual violence. Especially, CRSV survivors are the ones who would suffer most as they have no alternative to filing their cases once the limitation period has lapsed.

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38. See Proviso to Section 46, Indian Evidence Act: “[Provided that in a prosecution for an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.]”