



Women's Priority Legislative Agenda for the 17th Congress

1

Strengthening the Provisions of R.A. 8353: Amending the Anti-Rape Law



POLICY BRIEF NO. 1

This policy brief provides the rationale and recommendations for amending the Anti-Rape Law; redefining it by putting the element of lack of consent at its center, increasing the age of statutory rape, and by repealing the forgiveness clause.

WHAT IS THE ISSUE? WHAT HAS BEEN OUR RECENT EXPERIENCE/S WITH REGARDS TO THE ISSUE?

Rape is an inherent violent crime that results in physical, social, emotional and psychological harm. The Philippine National Police recorded an increasing trend of reported rape cases from 2011 to 2015, with 832 cases in the year 2011 to 2,010 cases in the year 2014. This slightly decreased to 1,986 in 2015. Reported rape cases ranked second among the cases of violence against women.¹ The same increasing trend is shown for cases of attempted rape with 201 reports in 2011 to 677 reports in 2015. Cases of incestuous rape average at 30 reports per year for the past five years.² These reports and figures show that rape remains a prevalent social problem.

The Anti-Rape Law of 1997 or Republic Act 8353, is progressive in terms of veering away from the chastity framework, and in classifying rape as a crime against persons rather than a crime committed against honor. However, certain issues still remain which require further strengthening of the law to make it more gender-responsive, progressive and effective.

WHY IS THE ISSUE IMPORTANT?

On Consent:

Despite the enactment of the Anti-Rape Law in 1997 which amended the crime of rape in the Revised Penal Code, it is often difficult for a woman to press charges because of the evidential rules concerning the crime, or many cases of rape are being dismissed in courts because victims have to prove beyond reasonable doubt that there was no consent.³

Consent must not only revolve around the woman's express refusal to engage in a sexual activity nor should it be presumed in the absence of overt physical effort to resist the act of rape. There is a need to resolve when a consent that is freely given is a valid consent in the context of age (minority) and mental capacity of the woman, among other circumstances.

Our present law implicitly sets the rightful age of consent to sex at 12 years old while official data show that majority of victims of rape are aged 13-15 years old. Earlier initiation of sexual intercourse is strongly associated with sexually transmitted infections,⁴ increased risk for cervical cancer,⁵ pregnancy, depression and suicide, and sexual abuse. Increasing such age of consent to at least 16 years of age will generally provide greater protection against abuses to girls and minors.

Capacity to consent should also take into account the mental condition of the victim. While indeed, people who are demented, deprived of reason or are unconscious are definitely incapable of giving valid consent to any sexual act, caution must be placed so as not to restrain or limit the freedom of persons with mental disabilities to make decisions for themselves when they can, i.e., during their lucid intervals, if applicable, including their freedom to engage in voluntary sexual activities. The National Council for Disability Affairs and other civil society organizations have raised this problematic portion of the law because as much as they want to protect persons with mental disabilities from abuse, they also want to maintain their independence and their right to freely decide for themselves at any chance possible.

On the Forgiveness Clause

The current Anti-Rape Law contains a forgiveness

clause that easily exonerates the offender and poses further danger to the victim. A provision in the law which states that the **“subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed”** gives an easy way-out for the offender which incentivizes him to carry out the crime. Once the female victim marries the offender, she no longer has legal remedy to file an action for the rape that happened before the marriage. It also recognizes that **“if the offender is the legal husband...the subsequent forgiveness by the wife who is the offended party... shall extinguish the criminal action or the penalty.”** This only perpetuates gender-based violence under the shroud of marriage which can involve a whole range of abuses - physical, sexual, and/or psychological - that can happen over a prolonged period of time.

WHAT ARE THE EXISTING LAWS OR POLICIES RELATED TO THE ISSUE?

Article II Section 11 of the 1987 Philippine Constitution provides that *“the State values the dignity of every human person and guarantees full respect for human rights.”* Further, Section 14 of the same Article provides that *“the State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men”*.

Section 12 of Republic Act 9710 or the Magna Carta of Women (MCW) provides for the amendment or repeal of laws or provisions of laws that are discriminatory to women which, among others, would include Republic Act 8353.

HAS THE SUPREME COURT ISSUED A RULING RELATED TO THE ISSUE? OR WHAT ARE THE RECENT RULINGS OF THE SUPREME COURT RELATED TO THE ISSUE?

In its latest jurisprudence, the Supreme Court is making progressive rulings on rape by overcoming gender myths and gender stereotyping of rape victims. It has ruled, among others, that in rape cases, the moral character of the victim is immaterial. Rape may be committed not only against single women and children but also against those who are married, middle-aged, separated, or pregnant. It has ruled that sexual intercourse, albeit within the realm of marriage, if not consensual is rape. (*People vs Jumawan*, G.R. No. 187495, 21 April 2014); that a prostituted person may also be a victim of rape. (*People v. Espino, Jr.*, G.R. NO. 176742, 17 June 2008; *People vs Penilla*, G.R. No.

189324, 20 March 2014); and that even the existence of an illicit affair between the accused and the victim does not, on its own, rule out rape as it does not necessarily mean that consent was present. (*People vs Saysot-Cias*, G.R. No. 194379, 01 June 2011).

The recently decided cases also pronounce that the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape. (*People vs Suarez*, G.R. No. 201151, 14 January 2015). Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. There is no stereotypical form of reaction for a woman when facing a traumatic experience, such as a sexual assault (*People vs Achas*, 189324, 20 March 2014); and that even the existence of an illicit affair between the accused and the victim does not, on its own, rule out rape as it does not necessarily mean that consent was present. (*People vs Saysot-Cias*, G.R. No. 194379, 01 June 2011).

WHAT ARE THE EXPERIENCES OF OTHER COUNTRIES IN ADDRESSING THE ISSUE?

The provision in the rape law which ends criminal prosecution in the event of marriage between the offender and the victim was abolished in Mexico in 1991, Colombia in 1997, Peru in 1999, and Ethiopia in 2005.⁶

Under the Indian Penal Code, rape is a non-compoundable offense, an offense against society and is not a matter to be left for the parties to compromise and settle. In a landmark judgment, the Supreme Court ruled that a rapist’s offer to marry the rape survivor could never be a ground for letting off the guilty lightly for two major reasons: one, it would encourage the convicts to pressurize rape survivors to reach a compromise and two, rape is a crime against society.

Most of the countries in Southeast Asia like Brunei, East Timor, Indonesia, Malaysia, Singapore, Taiwan, peg the age of consent at 16, meaning, sexual intercourse with a minor under 16 will be treated as a sex crime and is punishable in their common law even if consensual. Only the Philippines has the lowest age of consent (for sexual acts) which sets it at 12 while Japan and Vietnam at 13.

WHAT ARE THE CONSIDERATIONS IN ADDRESSING THIS ISSUE IN THE COUNTRY?

Promoting women’s rights and gender equality

Rape is a crime involving power relations between

the offender and the victim, and rooted in male dominance and female subordination. It is no doubt, the result of disparities in the status and situations of women and men - between the more powerful and the oppressed. The Anti-Rape Law should be viewed from a perspective that promotes the right of the more vulnerable groups and ensures their freedom from violence.

Responding to International Commitments

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on the States Parties to condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. While the Philippines has made considerable progress and milestones in keeping up with this commitment, the 2016 CEDAW Committee Concluding Observations on the Philippines' Combined 7th and 8th Periodic Reports raised concerns over the fact that statutory rape under the Anti-Rape Law of 1997 (Republic Act No. 8353) remains limited to cases wherein the victim is under the age of 12. Thus, the CEDAW Committee recommends expediting the amendment of the Anti-Rape Law of 1997 putting lack of consent as primary element of the definition of rape and raising the minimum age of sexual consent which is presently set too low at 12 years to at least 16 years.

Moreover, the United Nations Sustainable Development Goals, particularly Goal No. 5 pertaining to Gender Equality, targets, among others, the elimination of all forms of violence against all women and girls in the public and private spheres including trafficking and sexual and other types of exploitation.

Alignment with National Priorities

Amending the Anti-Rape Law is consistent with the new administration's agenda on women's rights. More importantly, it responds to the mandate of Congress under the Magna Carta of Women to amend or repeal laws that are discriminatory to women.

POLICY RECOMMENDATION

1. PCW proposes the following salient features of the new Anti-Rape Law:

- A. Specify that rape is "a sexual assault that violates a person's right to personal security

and bodily integrity with the essential element of lack of consent";

- B. The crime is committed by:
- a man who has carnal knowledge of a woman without her consent, whether or not the woman suffers injuries;
 - a man who touches or inserts his penis into the female's inner or outer vaginal labia, without her consent, whether or not the woman suffers injuries;
 - a man who touches or inserts his penis into another person's mouth or anal orifice, without the person's consent, whether or not the person suffers injuries;
 - a person who inserts any instrument or object, including a finger, into the genital or anal orifice of another person, **without the latter's consent.**
- C. The crime is committed under any of the following circumstances:
- Through **lack of victim's consent**, force, threat or intimidation;
 - Through fraudulent machination or abuse of authority;
 - In coercive or other similar circumstances rendering the complainant incapable of giving consent, including forcing another individual to sexually assault the victim;
 - When the offended person is deprived of reason or otherwise unconscious, or is demented even though none of the circumstances mentioned above be present, provided that he/she is not in his/her lucid interval during the sexual act.
 - Age of Statutory Rape:** When the offended party is **under sixteen (16) years of age** even though none of the circumstances mentioned above be present;
- D. Define "consent" as the voluntary agreement to engage in the sexual activity in question, provided:
- the **person consenting fully** understands what is being proposed;
 - the **person consenting** is aware of the societal standards of what is proposed;
 - agreements or disagreements will be respected equally;
 - both parties enter into the relationship or proposal voluntarily; and
 - both parties are mentally competent.

- E. Specify that the use of weapon, or other external force causing physical injuries maiming, disfigurement, or endangerment of the life of the victim be considered as one of the aggravating circumstances of the crime.

2. PCW also calls for the repeal of Article 266-C of the Anti-Rape Law of 1997, pertaining to the forgiveness clause which states that:

"Article 266-C. Effect of Pardon. - The subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, that the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio."

3. An amendment to Article 266-D is also proposed to avoid misinterpretation, to read as:

"Article 266-D. Presumptions. - Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

However, the absence of physical resistance must not be taken as consent on the part of the complainant. "

4. PCW also calls on the Supreme Court to consider issuing a "Rule on Trial of Rape Cases" which may include the following:

- A. Application of the "rape shield rule" as provided for in Section 6 of Republic Act 8505.
- B. Guiding principles on the appreciation of evidence in rape cases.
- C. Child and gender-sensitive decorum for lawyers, prosecutors, judges and other court personnel during trial of rape cases.

CONCLUSION

The Anti-Rape Law of 1997, once amended, will become a more effective instrument in protecting our people, especially the women and the children, from the most heinous form of sexual violence. The recommendations stated above will transform the law

into a more gender-responsive one as it addresses gaps and lapses which its original crafters failed to consider.

It is hoped that our legislators will prioritize and favor the immediate enactment of a law to amend the existing Anti-Rape Law provisions, in the interest of fulfilling their mandate under the Constitution and the Magna Carta of Women, as well as ensuring the best interest of the child.

ENDNOTES

¹Reports on physical injuries not included in the data.

²PNP-WCPC's Annual Comparative Data on Violence Against Women for the years 2011-2015

³As mentioned in the presentation of Ms. Amelia G. Suarez, RSW,MSW of the Women's Crisis Center (WCC) on September 27, 2013 during the Roundtable Discussion: Addressing Gender-based Violence Through a Gender-Responsive Judicial System: Call to Action.

⁴Young Age at First Sexual Intercourse and Sexually Transmitted Infections in Adolescents and Young Adult, Kaestle et.al, American Journal of Epidemiology, 2005.

⁵Risk factors for cervical cancer in Colombia and Spain by Bosch et.al., Int. J. Cancer, November 11, 1992

⁶www.equalitynow.org/node/267, last accessed August 8, 2016