

Violence against Women : Sexual Violence

Asia-Japan Women's Resource Center (AJWRC)

Space Allies

[Concern/Problem] (1) There is no holistic legal definition of sexual violence (that is, sexual crimes in the Penal Code are defined with a view to maintaining sexual morals rather than protecting sexual freedom) and rape in the Penal Code is too narrowly defined. (2) Punishment for rape and other sexual abuses is lenient. (3) Insensitive interpretation of laws and criminal procedures bars many victims from reporting crimes and accessing justice. (4) Education for law enforcement personnel remains insufficient. (5) There is no comprehensive support system for sexual assault victims.

[Proposed Recommendations] (1) **The government should review related clauses of the Penal Code with a view to qualifying sexual violence as sexual acts that occur without consent and against the victim's free will.** (2) **The definition of rape should be expanded to include other types of sexual assault. Also, marital rape and incest should be specifically defined as constituting a crime of rape.** (3) **Increase the minimum punishment and stiffen the penalty.** (4) **Review the standard interpretation of rape law which currently places the burden of proof on victims to prove that they resisted attack.** (5) **Review criminal procedures with a view to eliminating barriers for bringing perpetrators to justice.** (6) **Install measures to protect victims from inappropriate reference in the court.** (7) **Provide mandatory training on sexual violence and gender sensitivity for judges, prosecutors and police officers.** (8) **Strengthen system to support sexual assault victims by developing 24-hour rape crisis centers, training qualified medical staff and increasing funding for NGOs that support victims.**

Problems with the Penal Code (Article 177): (1) Sexual crimes are defined in separate clauses under the Penal Code, lacking holistic legal understanding of sexual violence as sexual acts occurring without consent and against the victim's free will. (2) The Penal Code defines rape only as the forcible insertion of a penis into a vagina, excluding penetration into other body parts, rape against male victims, and rape using implements. (3) Almost all cases of marital rape and incest remain unpunished, as they are not clearly defined as crimes constituting rape. (4) The prison sentence for rape is only 3 to 20 years, which is too lenient considering the seriousness of the crime. (5) Sexual violence cannot in principle be prosecuted without a formal complaint filed by the victim.

Problems with the court system: (1) Due to the male-centered interpretation of rape law, victims are often required to provide evidence that they desperately resisted the assault. This makes many victims hesitant to report the crime to the police. (2) Due to the prejudices held by police officers, prosecutors and judges, the victim's past sexual history and other irrelevant issues are often referred to during investigation and in the court, causing victims severe secondary suffering and hindering them from accessing justice. (3) The unequal power relations between victims and perpetrators are not adequately considered. Cases in which perpetrators abuse a position of power or authority to coerce participation in sexual acts are often interpreted as consensual one. (4) There is no systemic gender-sensitive training for judges and prosecutors.

Insufficient victim support: (1) There is not a single publicly-funded 24-hour rape crisis center. (2) There is a lack of hospitals staffed by sexual assault nurse examiners and dedicated and compassionate doctors. Training of such medical professionals relies heavily on the efforts of NGOs and hospitals which are under-funded.

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