



**Women's
Priority
Legislative
Agenda
for the 18th Congress**

**Strengthening the
Provisions of RA 8353:
AMENDING THE
ANTI-RAPE LAW**

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 repealing the forgiveness clause

WHAT IS THE ISSUE? WHY IS THE ISSUE IMPORTANT?

Rape is an inherently violent crime that typically results in physical, social, emotional, and psychological harm. It remains a prevalent social problem in the Philippines, and throughout the world.

Republic Act (R.A.) No. 8353, otherwise known as the Anti-Rape Law of 1997, expanded the definition of the crime of rape in the Revised Penal Code (RPC) and reclassified it as a crime against persons instead of as a crime against chastity. As a crime against persons, the law no longer considers rape as a private crime. Thus, anyone who knows of the crime may file a case on the victim's behalf, and prosecution may continue even if the victim drops the case. In this regard, the law is considered as progressive in terms of veering away from the chastity framework. However, some of its provisions still need to be amended or repealed for being discriminatory against women and non-compliant with international human rights standards embraced by the Philippines.

Redefining Rape by Focusing on Lack of Consent

Article 266-A, 1(a) and 1(c) of the RPC as amended by R.A. No. 8353 require the use of force, threat, intimidation, fraudulent machination or grave abuse of authority by the offender before the act can be considered as rape. Absent these circumstances, it will be difficult for the victim to press charges or succeed in prosecuting the same because of the evidentiary rules laid down in the current law.

The experiences of other countries shed light on how to go about redefining the crime of rape through the perspective of the victim instead of the attacker. The Sudanese Criminal Act defines rape as sexual intercourse without consent. In Great Britain, the performance of sexual acts other than those consented to by a person is cause for conviction of the crime of rape.

In *Papadimitropoulos v The Queen*, the Australian Chief Justice opined, "The law on the topic of consent is not

in doubt. Consent must be free and voluntary. It is not necessary for the victim to struggle or scream. Mere submission in consequence of force or threats is not consent. The relevant time for consent is the time when sexual intercourse occurs. Consent, previously given, may be withdrawn, thereby rendering the act non-consensual."ⁱ

The Philippine Supreme Court has also made progressive rulings relating to the concept of consent in rape cases. It has ruled that the moral character of the victim is immaterial in proving the crime of rape; that sexual intercourse, albeit within the realm of marriage, if not consensual is rape (*People v. Jumawan*, G.R. No. 187495, 21 April 2014); and that even a prostituted person may be a victim of rape (*People v. Espino, Jr.*, G.R. No. 176742, 17 June 2008; *People v. Penilla*, G.R. No. 189324, 20 March 2014). It also pronounced in several cases: that the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape; that the failure of a rape victim to offer tenacious resistance does not make her submission to the accused's criminal acts voluntary (*People vs Suarez*, G.R. No. 201151, 14 January 2015); and that a rape victim's experience is subjective and not everyone responds in the same way to an attack by a sexual fiend (*People v. Lomaque*, G.R. No. 189297, 05 June 2013). It has also ruled that there is no stereotypical form of reaction for a woman when facing a traumatic experience, such as a sexual assault (*People v. 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 v. Saysot-Cias*, G.R. No. 194379, 01 June 2011).

More recent jurisprudence on rape, however, raised some concerns. In the case of *People v. Claro y Mahinay* (G.R. No. 199894, 5 April 2017), the Supreme Court reversed the judgment of conviction rendered by both the Regional Trial Court and the Court of Appeals, and instead ruled that:

" xxx The established circumstances - their having agreed to go on a lovers' date; their

travelling together a long way from their meeting place on board the jeepney; their alighting on Rizal Avenue to take a meal together; their walking together to the motel, and checking in together at the motel **without the complainant manifesting resistance**; and their entering the designated room **without protest from her - indicated beyond all doubt that they had consented to culminate their lovers' date in bed inside the motel.**

Although she claimed that he had held her by the hand and pulled her upstairs, **there is no evidence showing that she resisted in that whole time, or exhibited a reluctance to enter the motel with him.** Instead, she appeared to have walked with him towards the motel, and to have entered it without hesitation. **What she did not do was eloquent proof of her consent.**" *(Emphasis supplied.)*

Hence, it is proposed that the acts of rape be redefined by highlighting the essential element of lack of consent of the victim, instead of requiring the use of force, threat, intimidation, fraudulent machination or grave abuse of authority by the attacker before the latter's act can be classified as rape. The exertion of resistance by the victim must never be made a requirement by the courts in proving the case of rape, because it is not, by law, an element of the crime. Amending the law will leave no room for varying and misplaced interpretations. Appreciation of evidence will also be anchored on standard gender-sensitive precepts instead of gender stereotypes which are unfair and discriminatory to the victim.

Raising the Age of Sexual Consent

Statutory rape refers to sexual relations involving a person below the legal age of sexual consent. It is punishable under the law precisely because persons of such ages are considered too young to intelligently decide for themselves in terms of engaging in any form of sexual intercourse with another person who is usually older.

Article 266-A 1(d) of the RPC as amended by R.A. No. 8353 sets the age for determining statutory rape at "below 12 years old".ⁱⁱ This means that in the Philippines, any sexual intercourse with a minor who has not reached the age of 12 is automatically regarded as rape, even if the minor consented or appeared to have voluntarily engaged in the sexual act. However, once a child reaches the exact age of 12, he or she is legally deemed mature enough to give sexual consent to another person.

Instead of protecting children, the law leaves them vulnerable to sexual predators especially those who are significantly older than them and who may take advantage of their impressionability. Moreover, it has been found by studies that earlier initiation of sexual

intercourse is strongly associated with sexually transmitted infections,ⁱⁱⁱ increased risk of cervical cancer^{iv}, pregnancy, depression and suicide, and sexual abuse.

The Philippines has the lowest age of sexual consent in Southeast Asia. Other countries like Brunei, East Timor, Indonesia, Malaysia, Singapore, and Taiwan peg the age of consent at 16 while Japan and Vietnam set it at 13 years old.

All this considered, it is proposed that the legal age of sexual consent in the country which is set too low at 12 years old, be raised to at least 16 years old. This is in line with the recommendation of the UN CEDAW Committee in its 2016 Concluding Observations on the Philippines' Combined 7th and 8th Periodic Report. Various Philippine government agencies whose mandates pertain to the protection and fulfillment of the rights and welfare of women, children, and other vulnerable groups are also proactively pushing for the same cause.

Repealing the Forgiveness Clause

Article 266-D of the RPC as amended by R.A. No. 8353, on the Effect of Pardon, provides that "the subsequent valid marriage between the (offender and the) offended party shall extinguish the criminal action of rape or the penalty imposed". It further states that 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 marriage is not void ab initio.

A rapist's offer to marry the rape survivor should never be a reason to let them off lightly for various reasons. It allows offenders to pressure rape survivors to reach a compromise. It likewise defeats the very purpose of reclassifying rape from a private to a public crime. Third, and most importantly, the "forgiveness clause" in R.A. No. 8353 exposes the victim to further danger as it does not consider the possibility that sexual violence may recur when the rape survivor is married off to her rapist.

With such provision in the law, women who have been raped by their husbands before or during the marriage are likely to be raped again, trapping them in a vicious cycle of physical, sexual and/or psychological abuse. The offender can coax or induce the wife to condone the violation of her rights and forgive him, under the shroud of preserving the sanctity of marriage or protecting their children from a broken family, among others.

WHAT ARE THE EXISTING LAWS OR POLICY ISSUANCES RELATED TO THE ISSUE?

National Laws, Jurisprudence, and Policies

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, Article 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”.

International Commitments

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls on the States Parties to pursue, by all appropriate means and without delay, a policy on eliminating discrimination against women. While the Philippines has made considerable milestones in upholding 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 R.A. No. 8353 remains limited to cases where the victim is under the age of 12. The Committee recommended the amendment of the law by placing the lack of consent as a 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 on Gender Equality, targets the elimination of all forms of discrimination against all women and girls everywhere, and all forms of violence against them. It further targets the adoption and strengthening of policies and legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

POLICY RECOMMENDATION

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

1. 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”. Also, define “consent” as

the voluntary agreement to engage in the sexual act in question, provided that:

- a) the person consenting fully understands what is being proposed;
 - b) both parties enter into the relationship or proposal voluntarily; and
 - c) both parties are mentally competent.
2. Further amend Article 266-A of the RPC as amended by R.A. 8353, to read as follows:

“Article 266-A. *Rape, When and How Committed* – Rape is committed **by any person who shall commit any of the following acts against any person WITHOUT HIS/HER CONSENT, whether or not injuries were suffered:**

- a) **When the offender inserts his penis into the victim’s inner or outer vaginal labia, mouth or anal orifice;**
 - b) **When the offender inserts any instrument or object, including a finger, into the victim’s inner or outer vaginal labia or anal orifice; or**
3. Repeal Article 266-C of the law, so that the subsequent valid marriage of the offended party and offender, or the subsequent forgiveness of offending husband by the wife does not extinguish the criminal action or penalty imposed in rape cases.
 4. An amendment to Article 266-D is also proposed to avoid misinterpretation, to read as follows:

"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 automatically taken as consent on the part of the complainant.**"

ⁱ Chief Justice King in Question of Law Reserved on Acquittal (No 1 of 1993)

ⁱⁱ Alternatively, it can be said that the age of sexual consent is pegged at 12 years old

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

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