

## Chapter 7

### Rape

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#### Objectives

This chapter focuses on the offence of rape in the target countries, i.e. its incidence and legal and other responses by state organs to address rape. The aim is to sensitise and enable judges and other stakeholders to make informed and human rights compliant decisions when dealing with cases of rape.

This chapter consists of four sections. Section 7.1 focuses on the offence of rape in Cambodia, i.e. its incidence and legal and other responses by state organs to address rape. Section 7.2 focuses on the offence of rape in India, i.e. its incidence and legal and other responses by state organs to address rape. Section 7.3 focuses on the offence of rape in Pakistan, i.e. its incidence and legal and other responses by state organs to address rape. Section 7.4 focuses on the offence of rape in Thailand, i.e. its incidence and legal and other responses by state organs to address rape.

### 7.1 Cambodia

#### 7.1.1 Rape

Rape and sexual violence are a serious and pervasive problem in Cambodia. According to the UN Multi-country Study on Men and Violence in Asia and the Pacific, 20.4 per cent or 369 of the 1,812 male respondents in the study admitted to having committed rape at least once in their lifetime.<sup>1</sup> Of those 369 male respondents, 23 per cent admitted being involved in gang rape, 13 per cent admitted raping a non-partner, and 64 per cent admitted raping an intimate partner.<sup>2</sup> In 22 per cent of cases, men who had raped an intimate partner had also raped a woman who was not a partner.<sup>3</sup> In 49.7 per cent of cases, the male perpetrator had raped more than once and in 21.3 per cent of cases, there was more than one victim.<sup>4</sup> In 11.7 per cent of cases the perpetrator had raped four or more victims.<sup>5</sup> More than half of the male respondents (52% or 191 men) admitted to perpetrating their first rape prior to reaching 20 years of age.<sup>6</sup>

The motivations behind the decision to rape were cited as: ‘sexual entitlement’ (45%);<sup>7</sup> anger or punishment (42%);<sup>8</sup> ‘fun or boredom’ (27%);<sup>9</sup> and drinking or intoxication (14%).<sup>10</sup>

The women's rights group, Cambodian Human Rights and Development Association (ADHOC), recorded 131 rape cases in the first six months of 2015, compared to 80 cases in 2014 – a near 64 per cent increase. Of those 131 cases, 100 involved a child victim and in 63 cases the victim was between 10 and 18 years old; in 32 cases the victim was between five and 10 years of age; and in five cases the victim was younger than five years of age. Fifteen cases involved victims with disabilities, six involved multiple perpetrators, and three cases resulted in death of the victim.<sup>11</sup>

Impunity for rape continues to be widespread: 44.5 per cent of the male respondents who had admitted to perpetrating rape reported that they never faced any legal consequences (arrest or prosecution) for their actions.<sup>12</sup>

#### Rape: law

**Constitution of Cambodia 2008:** Article 31 of the constitution should be used as the starting point to address and protect victims of rape. Article 31 states, 'the Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, **women's rights and children's rights**' [emphasis added].<sup>13</sup> Article 31(2) states that all 'citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status'.<sup>14</sup> Article 38 'prohibits any physical abuse of the individual'.<sup>15</sup> Article 45 states that '[a]ll forms of discrimination against women shall be abolished'.<sup>16</sup>

**Criminal Code 2009:** Article 239 of the Criminal Code states that "Rape" shall mean any act of sexual penetration with a sexual organ or an object committed against another person of either sex by violence, coercion, threat or by being opportunistic.<sup>17</sup> The requirement of non-consent as an element is substituted with 'violence, coercion, threat or by being opportunistic'.<sup>18</sup> The penalty for rape or attempted rape is imprisonment from five years to ten years.<sup>19</sup>

The age of consent is 15 years.<sup>20</sup> There is no exception for marital rape, which suggests that spouses may be criminally liable for raping their intimate partners.

The sentence for rape may be increased to 15 years if there are aggravating circumstances such as use of a weapon, use of a narcotic, exercising a position of authority over the accused, abusing a position of authority and multiple perpetrators.<sup>21</sup> If the rape is perpetrated against a vulnerable person, the sentence may be increased from seven to 15 years. Vulnerable persons include victims who by their age are vulnerable (young children or the

elderly), a victim who is pregnant, or a person who is vulnerable by reason of illness or disability.

Where the act of rape results in mutilation or disability, the sentence increases from 10 to 20 years.<sup>22</sup> If the act of rape involves torture or acts of cruelty, the penalty rises from 10 to 30 years.<sup>23</sup> The code does not define torture.

Where the act of rape causes the death of the victim, where there is no intent to kill or the suicide of the victim, the sentence is 15 to 30 years.<sup>24</sup> For example, the maximum penalty would be 15 years of imprisonment depending on the means used or connection with the perpetrator for committing rape (Article 240),<sup>25</sup> and where there are aggravating circumstances (Article 241).<sup>26</sup>

#### **Law on the Prevention of Domestic Violence and the Protection of Victims**

**2005:** Marital rape may also be considered a form of domestic violence under the category of 'sexual aggression' (Article 7) if it is assessed as 'violent rape'.<sup>27</sup> Unfortunately, 'violent rape' is not clearly defined under the law, and there is no legal guidance on how to assess what constitutes violent rape.<sup>28</sup> In any event, given that there are no stated penalties in the Prevention of Domestic Violence and the Protection of Victims Act 2005, the only means of recourse for marital rape would be the criminal law, even if it were committed as a domestic violence offence. In practice, marital rape is seldom reported, investigated or prosecuted. According to LICADHO, 'many police and judges do not really believe that rape of a wife by a husband is possible'.<sup>29</sup> Where a complaint is made to authorities, more often than not it is withdrawn before the matter goes to trial. Even when a victim perseveres within the criminal process, it is common for judges to give a suspended sentence to accused in marital rape cases.<sup>30</sup>

**International obligations:** Rape and other forms of sexual violence constitute a form of violence against women under Article 2 definition of the UN Declaration on the Elimination of Violence against Women.<sup>31</sup> Rape perpetrated by state and non-state actors also constitutes a gross human rights violation, amounting to a form of torture and other cruel, inhuman and degrading treatment and punishment.<sup>32</sup> Rape and other forms of sexual violence also impair or nullify the enjoyment of other human rights and freedoms under international law.<sup>33</sup>

As a State party to the UN Convention against Torture,<sup>34</sup> Cambodia is under an obligation to exercise due diligence to prevent, investigate, prosecute and punish private actors for their role in committing rape and other forms of gender-based violence.<sup>35</sup> The UN Committee against Torture has observed that 'the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture [and rape] facilitates and enables non-State actors to commit acts impermissible under the

Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.<sup>36</sup>

As a State party to CEDAW, Cambodia has an immediate and continuous obligation to condemn discrimination in all its forms, which includes ensuring that women are protected against direct and indirect discrimination within legislation and also committed by state institutions such as the judiciary, public authorities and private individuals.<sup>37</sup>

#### **Rape: Discriminatory attitudes encouraging impunity**

There are several key weaknesses in Cambodian law which undermine state obligations to prevent and prohibit rape and sexual violence. Discrimination in legislation is perhaps the most obvious weakness in Cambodian law. Such discrimination not only reinforces and propagates gender-based stereotypes, but directly impacts impunity, affecting how rape and sexual violence are investigated, prosecuted and adjudicated in Cambodia. Impunity for rape is systemic in Cambodia, largely because of cultural attitudes, patriarchal social structures and corruption.

The elements of the crime of rape under Cambodian law are: (1) an act of sexual penetration with a sexual organ or an object; (2) using violence, coercion, threat or by being opportunistic. Non-consent (or the victim's lack of consent) is not enumerated as an element of the offence. Instead, evidence of violence, coercion or use of threats must be adduced to establish the victim's non-consent in a crime of rape. In other words, sexual interaction with a victim who is not consenting (in the absence of other evidence of resistance, physical violence or coercion) is not recognised as a form of rape or sexual violence under Cambodian law. It is only if the victim can show the presence of some other extenuating factor (e.g. violence, threat of violence, coercion) that a court will then be persuaded that the non-consensual sexual act amounted to rape. Framing sexual violence in this way is a form of discrimination against women. It has enormous implications in how rape and sexual violence are perceived in society; how victims are treated; how rape and sexual violence cases are investigated; how decisions to prosecute rape and sexual violence cases are made; and ultimately how a case of rape or sexual violence is adjudicated. It focuses the investigation, prosecution and adjudication of sexual violence on the conduct of the victim (e.g. was the victim resisting the accused sufficiently for it to constitute a crime of rape or sexual violence?). It makes the victim more susceptible to 'victim-blaming', and enables defendants to introduce evidence relating to the victims' behaviour, physical appearance and past sexual history as a basis to show implied consent. It propagates and reinforces discriminatory attitudes towards women which contribute to violence against women.

### Rape: cases

A 17-year-old girl went to visit her boyfriend at his house. She was raped by three men: her boyfriend, a friend of the boyfriend and a third man who she could not identify. The boyfriend and his friend were tried for rape but found innocent. According to the judge, the girl had gone of her own accord to her boyfriend's house and consented to have sex with him. As a result, the judge decided that none of the suspects was guilty of rape.<sup>38</sup>

The victim was a 35-year-old woman who was taken by her boyfriend to the house of one of his friends where they both raped her. The case went to trial and despite both being convicted of rape, the boyfriend was sentenced to 18 months in prison and the other man to one year. Though the judge was not explicit in his reasons for the sentences, NGO workers felt that the very light sentences might have been due to the fact that one of the perpetrators was the victim's boyfriend.<sup>39</sup>

A nine-year-old girl was raped five times by a 23-year-old neighbour. The victim's family reported the case to the commune police who negotiated a settlement with the suspect. The victim's family agreed that they would receive US\$1,200 in exchange for withdrawing the complaint. When they received the money, the police took US\$500 as a fee for facilitating the agreement, ensuring the case would not be further investigated and to cover transportation costs. The family received only US\$700.<sup>40</sup>

A 14-year-old girl was gang-raped by three men. One of the men was caught and brought to trial. Before the verdict was announced the families of the victim and perpetrator came to an agreement that the two would marry and that the perpetrator's parents would give a sum of money to the victim's family. They also gave money to the trial judge, who convicted the perpetrator of rape, sentenced him to 18 months in prison and then suspended the whole sentence. Victim support workers from LICADHO tried to discourage the family from going ahead with the marriage. The victim's mother did not want her daughter to get married but she thought that as they lived in the countryside it would be better for her daughter to get married and afterwards get a divorce rather than to remain unmarried with people knowing that she had been raped.<sup>41</sup>

A large proportion of rape cases are withdrawn from court because of settlements between the victim and perpetrator's families, often negotiated by police. Such settlements generally involve a payment of money, 'compensation' from the suspect (or his family) in exchange for the victim withdrawing their complaint. Sometimes the settlement involves the victim marrying the perpetrator. According to LICADHO, 'almost 100 per cent of cases settled by compensation involved a corrupt payment to the official involved [in the negotiation], either from the suspect or from the victim.'

In this respect, corruption plays a significant role in obstructing victims' access to justice, remedies and reparations. The amounts paid to victims' families tend to range from US\$500 to US\$4,000 or more. The share of the negotiating officer ranges from 5 per cent to 50 per cent of the settlement amount. Incentives to settle include: fear of public shame and stigma if the case goes to trial as loss of virginity affects the ability of a victim to get married and the reputation of a family; the practical challenges of pursuing a case through court (e.g. attending court, covering legal expenses) which can often take years; the power and influence of the accused and his family, which may compromise the impartiality and independence of the Court; and the likelihood of conviction and sentence (in many cases perpetrators are acquitted or granted suspended sentences).

#### Rape: Recommendations

The following recommendations are offered which may be helpful in bringing Cambodia in compliance with its obligations under international law:

- Non-consent to sexual conduct should be enough on its own to establish the offence of rape and sexual violence. There should be no requirement of evidence of violence, coercion, or opportunistic behaviour to prove a charge of rape.<sup>42</sup>
- The informal settlement of rape cases should not be permitted; and all settlements involving marriage should be rescinded, and any marriages entered into as a result of rape settlements should be annulled.<sup>43</sup>
- Suspended sentences should not be permitted in rape cases.
- No adverse inference should be drawn from any delay in reporting or filing the initial police complaint in a case of rape or sexual violence.<sup>44</sup>
- No evidence related to a complainant's character or past sexual history should be admitted in a rape trial as it is not relevant.<sup>45</sup>
- Rules or principles which reinforce e.g. the following discriminatory gender-based stereotypes should not be used:<sup>46</sup>
  - (a) The 'normal reaction' requirement which suggests that if a woman does not react in a certain way, she is not a 'virtuous or good' woman and as such not trustworthy or credible;
  - (b) The 'corroboration rule' or 'cautionary rule', which suggests that women are inherently deceptive, hysterical and irrational, and thus objective evidence from additional sources is required to corroborate a complainant's testimony.

- Protection orders and other measures must be issued to ensure the safety and security of victims throughout the judicial process (pre-trial, trial and post-trial/sentencing).
- Publication bans, in camera proceedings and other measures must be ordered during the judicial process to ensure the victim's right to privacy and confidentiality.
- Video-link testimony, screens or other visual barriers must be used to ensure victims are not required to face their perpetrator while testifying.
- Separate entrances and waiting areas must be available for victims before, during and after court proceedings.
- Victim support and assistance personnel must be available and permitted to accompany victims throughout the judicial process (especially for children).

## 7.2 India

### 7.2.1 Rape

The National Crimes Record Bureau of India recorded a 9 per cent increase in crime against women in 2014 compared to 2013, with 36,735 cases of rape, including 197 cases of custodial rape and 2,346 of gang rape.<sup>47</sup>

**Rape: law**

**Indian Penal Code 1860:** The laws on rape were revised following a prolonged and intense campaign by women's rights organisations and activists after Nirbhaya's case (after a woman, aged 23 years, was gang raped in a moving bus in Delhi in December, 2012). The Government mandated a former Chief Justice of India, Justice Verma, to head a committee and hold public hearings.<sup>48</sup> Pursuant to the committee's recommendations, the Criminal Law (Amendment) Act, 2013 was enacted amending various provisions of the IPC, Code of Criminal Procedure (CrPC) and the Evidence Act.

Section 375 of the Indian penal code as amended in 2013 has significantly changed the definition of rape. A man is said to commit rape if he:

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or



- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
  1. against her will,
  2. without her consent,
  3. with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,
  4. with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married,
  5. with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she give consent,
  6. with or without her consent, when she is under 18 years of age,
  7. when she is unable to communicate consent.<sup>49</sup>

There is no consent if it is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception or if it is given by an insane person.<sup>50</sup>

Rape is no longer limited to acts of penile penetration. The definition is broadly worded and gender neutral in some aspects. The word penetration means 'penetration to any extent', and lack of physical resistance is immaterial for constituting an offence.<sup>51</sup> Except in certain aggravated situations, a minimum punishment of seven years' imprisonment is mandated, with ten years in case of aggravated situations. In both instances, the punishment may extend to life imprisonment and a fine. In addition, the law now provides a punishment for rape causing death or resulting in persistent vegetative state of the victim.<sup>52</sup> Another offence is having sexual intercourse with a woman by a person in authority or fiduciary relationship who abuses such position to induce any women in his custody or under his charge.<sup>53</sup> The penalty for gang rape is a maximum of life imprisonment and reasonable compensation sufficient to meet the victim's medical expenses and rehabilitation.<sup>54</sup>

Section 375 of IPC provides that sexual intercourse by a man with his own wife, if she is not under 15 years of age, is not rape. Forced sexual intercourse



is an offence only when the woman is living separately from her husband under judicial separation/custom.<sup>55</sup> The Protection of Women from Domestic Violence Act 2005 has, however, created a civil remedy for marital rape.

**Evidence Act 1872 (IEA):** Section 114A provides that the court may presume lack of consent from the complainant's statement to this effect, in cases of custodial rape, rape of a pregnant woman and gang rape. Section 155(4) of the IEA was repealed in 2002 because it required the complainant to prove that she was of 'good' character, which was a major barrier to women and girls securing justice in rape cases. Section 146 states that it is not permissible for the defence to put questions in cross-examination about a complainant's general moral character.

**Code of Criminal Procedure 1973 (CrPC):** Section 164(A) provides for medical examination of victims of rape, Section 53(A) for medical examination of accused of rape and Section 176(1A) (a) (b) for investigation by judicial magistrates of custodial rape and deaths. Section 357(A) of the CrPC deals with compensation schemes for victims of sexual assault.

Rape: key judgments

### **Tekan Alias Tekram v State of M.P. M.P (now Chhattisgarh) [2016] INSC 142 (11 February 2016)**

Key points:

- Sexual exploitation
  - Compensation scheme for victims of sexual exploitation
2. [...]. This is a case where the prosecutrix, who is blind and an illiterate girl, was subjected to sexual intercourse on the promise of marriage. [When she became pregnant, she asked him to marry her. The man refused to marry her. Her parents took the matter to a local Panchayat (local council of elders / notables) but even after their request, the man refused to marry her. The matter was investigated by the police and the case sent to court for trial]. [...].

#### **Case 7.1 Tekan Alias Tekram v State of M.P. M.P. (now Chhattisgarh)**

5. The trial court after appreciating the entire evidence [...] held that the prosecution was able to prove the guilt of the accused-appellant. Accordingly, the accused was convicted under Section 376 IPC and was sentenced to 7 years rigorous imprisonment.
6. [The accused appealed against his conviction to the High Court]. The High Court examined the facts and re-appreciated the entire evidence adduced from the side

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of the prosecution and recorded an independent finding and affirmed the judgment of conviction passed by the trial court. [...].

12. Before dealing with the present matter it is pertinent to mention briefly the amount payable to the rape victim and for rehabilitation under Victim Compensation Schemes notified by the other State Governments and Union Territories under Section 357A of the Cr.P.C. 1973. [...].
13. [...], it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs.20,000/- to Rs.10,00,000/- as compensation for the offence of rape under section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-.
14. While going through different schemes for relief and rehabilitation of victims of rape, we have also come across one Scheme made by the National Commission of Women (NCW) on the direction of this court in Delhi Domestic Working Women's Forum vs. Union of India and Ors. [Writ Petition (Cri) No. 362/93], whereby this Court inter alia had directed the National Commission for Women to evolve a scheme so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,000,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against a handicapped woman who required specialized treatment and care.
15. Coming to the present case in hand, victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National Commission for Women and follow up for relief and rehabilitation. Accordingly, the victim, who has already suffered a lot since the day of the crime till now, needs a special rehabilitation scheme. [...].
17. Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime.
18. The victim, being in a vulnerable position and who is not being taken care of by anyone and having no family to support her either emotionally or economically, we are not ordering the Respondent-State to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her Village. Accordingly, we in the special facts of this case are directing the respondent-State to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim.
19. In the result, we dismiss the appeal having no merit and issue the following directions:
  1. All the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation;
  2. So far as this case is concerned, the Respondent-State shall pay a sum of Rs. 8,000/- per month as victim compensation to the victim who is physically handicapped, i.e. blind, till her life time.

## **Delhi Domestic Working Women's Forum v Union of India 1995 SCC (1) 14, JT 1994 (7) 183**

### **Key points:**

- Measures for assisting victims of rape

This public interest litigation invokes the benign provision of Article 32 of the Constitution of India, at the instance of the petitioner Delhi Domestic Working Women's Forum to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel.

### **Case 7.2 Delhi Domestic Working Women's Forum v Union of India**

The court said that speedy investigation and trial were essential prerequisites of law. The court had to spell out the parameters of expeditious investigation and trial in rape cases.

15. [...] We think it necessary to indicate the broad parameters in assisting the victims of rape.
  1. The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.
  2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
  3. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
  4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
  5. The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.
  6. In all rape trials anonymity of the victim must be maintained, as far as necessary.
  7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.
  8. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

## 7.3 Pakistan

### 7.3.1 Rape

A study by a Pakistani NGO, War against Rape, gives an overview of the number and extent of reported rape cases.<sup>56</sup> According to these estimates, four women were raped every day across Pakistan during 2014, and a total of 1,582 cases were reported across the country in 2014<sup>57</sup> compared to 772 in 2013. In the same year, 3,508 children were sexually abused compared to 3,002 in 2013.<sup>58</sup> Around 67 per cent of these cases were reported from rural areas while the most vulnerable age bracket was of children between 11 and 15 years of age.<sup>59</sup>

#### Rape: law

Section 375 of the Pakistan penal code defines rape as follows:

*A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:*

1. *Against her will;*
2. *without her consent;*
3. *with her consent, when the consent has been obtained by putting her in fear of death or of hurt;*
4. *with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or*
5. *with or without her consent when she is under 16 years of age.*

*Explanation.* Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Section 375 covers marital rape as any sexual intercourse against the will or without consent of the woman constitutes rape. It does not exclude marital rape, as is commonly misunderstood. There is a clear difference between section 375 of the Indian penal code and the Pakistani penal code in that it does not allow marital rape whereas the amended Indian section 375 only prohibits rape where a man's wife is under 15 years old.

Section 376 provides punishment for rape:

1. *Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.*

2. *When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.*

Section 496C provides punishment for making false allegation of adultery and fornication:

*Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees:*

*Provided that Presiding Officer of a Court dismissing a complaint under section 203C of the Code of Criminal Procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence.*

#### Rape: key judgments

#### **Salman Akram Raja v The Government of Punjab through the Chief Secretary Pakistan Law Journal 2013 SC 107**

##### Key points:

- Police reluctance to register a rape case
- Compulsory DNA test
- Out of court settlement for victim of rape
- Measures for actors of justice

1. A 13-year-old girl Ayesha alias Aashi resident of Ratta Amral, Rawalpindi was subjected to gang-rape in March, 2012. Her father Muhammad Aslam approached the concerned Police Station on 21.03.2012 for registration of FIR. No formal FIR was registered, however, upon entry of the complaint in the Roznamach, Sub-Inspector Zafar Iqbal took the rape victim to District Headquarters Hospital, Dheenda Road, Rawalpindi for medical examination on 21.3.2012. The concerned medical officer gave his findings/opinion after eight days of examination. Despite confirmation of commission of the offence, the FIR could not be registered. The attitude of the investigating agencies, added to the plight of victim girl; she attempted to end her life by committing suicide on 16.04.2012. This incident was highlighted by the media, as such, it came into the notice of this Court, thus the suo moto action was initiated and the matter was registered as HRC No. 13728-P/2012.

### Case 7.3 Salman Akram Raja v The Government of Punjab through the Chief Secretary Pakistan Law Journal

The Prosecutor General, Punjab was directed to pursue the case against the accused persons as well as the concerned police officers/officials who delayed the registration of FIR. In pursuance whereof, on 18.4.2012 an FIR No. 178 of 2012 under Sections 375 & 376 of the Pakistan Penal Code, 1860 was registered at Police Station, Ratta Amral. On the direction of this Court, a 4-Member police investigation team headed by Additional IGP, Punjab was constituted, which submitted report before the Court, holding responsible therein DSP Taimur Khan, Sub-Inspectors Jawwad Shah and Zafar Iqbal for tempering the Roznamach and causing inordinate delay in the registration of FIR. Departmental proceedings were initiated against all the responsible police officers/officials, but on 22.05.2012 when the case was fixed before the Sessions Judge, Rawalpindi, the complainant Muhammad Aslam informed the Court that he had reached an out-of-Court settlement for a consideration of Rs. 1 million with the accused persons and would drop the charge of gang-rape against them.

2. In the above background, the petitioners, apprehending the acquittal of the accused u/S. 265-K of the Criminal Procedure Code, 1898 approached this Court by means of instant Constitutional Petition. According to them, in such like cases, the out-of-Court settlement constitutes a mockery of justice and abuse of law (Cr.P.C.) as such violates the fundamental rights of the victim because such offences i.e. rape etc. are not against a single person but affect the whole society.
16. [...] The petitioner has prayed that following points may be approved and the concerned public authorities be directed to enforce them through the course of investigation and prosecution of all rape matters in Pakistan:
  - (a) Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counselling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organization. On receipt of information regarding the commission of rape, the Investigating Officer (IO)/Station House Officer (SHO) should inform such organizations at the earliest.
  - (b) Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
  - (c) As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 1898, preferably by a female magistrate.
  - (d) Trials for rape should be conducted in camera and after regular Court hours.
  - (e) During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
  - (f) Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court.

When we inquired from the learned Advocate General and Prosecutor General, Punjab etc. that as to whether they had any objection, if the petition is disposed of in the light of the above said recommendations/prayers, they stated that they have no objection because such suggestions are already under consideration of the concerned authorities and legislation is likely to be made in this regard. Thus, the petition is disposed of in the above terms.

## **Human Rights Case No. 42389-P of 2013 (Action taken on news clipping from Daily Dunya dated 4.11.2013 regarding rape on a deaf and mute lady at Nankana Sahib)**

### **Key points**

- Police reluctance to register rape case
- Departmental proceedings against delinquent police officials

On having considered the gravity of the incident wherein a deaf and dumb women mother of three children molested report was called for from the Inspector General Punjab Police. In response to the order of this Court and on receipt of the report submitted by Muntazir Mehdi, DPO the following order was passed on 8.11.2013 [see box]:

### **Case 7.4 Human Rights Case No. 42389-P**

An unfortunate incident of gang rape of a deaf and mute lady namely Mst. Fouzia, mother of three children, by more than two persons took place in District Nankana Sahib on 9.10.2013. Admittedly, she was running from pillar to post for redressal of her grievance but nobody listened to her. Consequently, she went to the Ilaqa Magistrate herself and submitted application praying for her medical examination. It was for the first time that on 12.10.2013, the learned Ilaqa Magistrate, ordered for her medical examination from the D.H.Q. Hospital, which was accordingly conducted and following injuries were noticed on her person:

'Two mild tears and very mild redness on vulva means inner side of wall of labia majora measuring .25 x .5 cm both no need to stitch just like abrasions. Progress with med.'

2. Perhaps on having smelled by the Police about adverse action being taken by the Magistrate or some other authority, FIR No.364/13 dated 14.10.2013, under section 376(2) PPC, was registered at Police Station Nankana Sahib on the application of her brother Muhammad Ibrahim, as the victim is deaf and mute. However, taking the advantage of same, the investigation of the case was not conducted honestly, in as much as the victim's statement was not recorded. When this matter was reported in newspaper "Duniya" on 4.11.2013, the same was brought to the notice of one of us (Justice Iftikhar Muhammad Chaudhry, CJ) by the office for perusal and report was called from the Inspector General of Police, on 6.11.2013. No report was submitted by the Inspector General of Police, Punjab, and it seems that instead of taking prompt action, he handed over the matter to some of his subordinate. In any case, on account of non-receipt of report on 7.11.2013, the case was ordered to be fixed in the Court with notice to the Advocate General, Punjab.

[...]. [District and Sessions Judge Chiniot was appointed to conduct an inquiry in this matter. His report found police negligence in this case].

[The Supreme Court found that] it appears that the DPO, Muntazir Mehdi being in supervisory position did not probe diligently into the inquiry conducted by his juniors and exonerated the culprits on the ground that there was contradiction in the statements of the victim and her brother as to number of the accused; as according to the victim, rape was committed by three accused whereas her brother (complainant) stated that they were six in numbers. Not only this, even one Shahid culprit who was prima facie found to be involved was allowed to go scot free in view of the affidavit which was obtained from the complainant. The complainant has stated in the Court that he had given the

(continued)



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affidavit under influence. It is to be noted that as per the medical report the happening of the incident cannot be denied. The opinion of the medical officer is reproduced as under:

'Two mild tears and very mild redness on vulva means inner side of wall of labia majora measuring .25 x .5 cm both no need to stitch just like abrasions. Progress with med.

Mr. Muntazir Mehdi, DPO appeared in person and offer explanation pleading innocence but the facts noted hereinabove are sufficient to conclude that on account of his criminal negligence a poor lady who is deaf and dumb subjected to criminal act and the police knowing well about their negligence were trying to cover up their defects. In this view of the matter, we direct the Inspector General Police, Punjab to initiate criminal proceedings against all concerned delinquent police officers/officials including the said Muntazir Mehdi as early as could be possible. He shall make sure an independent investigation without being influenced by anyone who is allegedly involved in the case. In the meanwhile, for the purpose of initiating disciplinary proceedings against the DPO Muntazir Mehdi and other delinquents, the matter shall be referred to the concerned authority in accordance with law. The petition stands disposed of in the above terms.

A solitary statement of the rape victim is sufficient for conviction if it is in confidence inspiring and is supported by other evidence such as medical or circumstantial evidence.

## 7.4 Thailand

### 7.4.1 Rape

It has been suggested that a woman is a victim of rape every 15 minutes in Thailand.<sup>60</sup> According to the Thai Public Health Ministry, there were 31,866 incidents of rape reported in 2013<sup>61</sup> and the Thailand Development Research Institute estimates that as many as 30,000 rapes occur every year.<sup>62</sup> However only a small fraction of incidents are ever reported: from 2008 to 2013 only 4,000 cases of were reported to police annually, leaving some 87 per cent of rape cases unreported.<sup>63</sup>

Cultural attitudes and commonly held beliefs about women's role and behaviour impact how sexual violence is perceived, and often interfere with victims' ability to access justice, remedy and reparations for the rape.<sup>64</sup> Thailand is traditionally a patriarchal society.<sup>65</sup> Reporting or acknowledging sexual violence can invite shame not only to the victim but her family: it is inextricably linked with family honour and social belonging.<sup>66</sup> In the words of one female inquiry officer in Songkhla, 'the reality is that families [of victims of sexual violence] are too ashamed; they don't want the story to be known. "Saving face" is more important than justice.'<sup>67</sup> There are two words for rape in Thai: *kom-keun* which connotes forced intercourse without consent; and *plam*, a colloquial term denoting sex with force and without explicit consent. Both are socially accepted.<sup>68</sup> This latter form of sexual violence is often depicted in soap operas where female characters are perceived as 'bad girls' in need of punishing through rape, which then enables them to 'fall in love' and 'succumb' to their perpetrators.<sup>69</sup> Rape occurring in

marital relationships was long seen as acceptable, and not considered a criminal offence. It was only in 2008 that the Criminal Code was amended to remove the exception for marital rape under section 276.

#### **Rape: law**

**Criminal Code 2008:** Section 276<sup>70</sup> of the Criminal Code sets out two elements in the crime of rape: sexual intercourse with the victim and the inability of the victim to resist as a result of violence, threat of violence or coercion. Section 276 defines sexual intercourse as any act using the perpetrator's sexual organ or other things to penetrate the victim's sexual organ, anus or oral cavity.<sup>71</sup>

This definition is gender neutral - it can be committed by a male or female perpetrator against a female or male victim.<sup>72</sup> It is significant to note that while the exception to marital rape no longer exists under section 276, the court may reduce the sentence in the case of a marital rape if a victim expresses a desire to continue to live with the offender-spouse.<sup>73</sup>

Sexual intercourse with a child under 15 years of age is criminalised under Thai law.<sup>74</sup> However, an exception exists for marriage under section 277(1): 'consent given by a child under 15 years, who is not married to the alleged perpetrator will not be valid.'<sup>75</sup> In other words, a child above the age of 13 years who is married cannot seek protection from sexual abuse if the perpetrator is their spouse, unless the sexual abuse satisfies the elements of a crime of rape under section 276.

No such exception exists for children below the age of 13 years: [i]f the offence ... is committed against a child who is not over thirteen years old yet, the offender shall be punished with imprisonment of seven to twenty years and fine of fourteen thousand to forty thousand baht or imprisonment for life.<sup>76</sup>

Under section 277(5), an alleged perpetrator who is below the age of 18 years may avoid criminal liability for sexual abuse if he or she marries their victim (an adolescent between the ages of 13 and 15 years) and the court sanctions the marriage.<sup>77</sup>

**International obligations:** Rape and other forms of sexual violence constitute a form of violence against women covered by article 2 definition of the UN Declaration on the Elimination of Violence against Women.<sup>78</sup> Rape perpetrated by state and non-state actors constitutes a gross human rights violation, amounting to a form of torture and other cruel, inhuman and degrading treatment and punishment.<sup>79</sup> Rape and other forms of sexual violence also impair or nullify the enjoyment of other human rights and freedoms under international law.<sup>80</sup>

As a State party to the UN Convention against Torture,<sup>81</sup> Thailand is under an obligation to exercise due diligence to prevent, investigate, prosecute and punish private actors for their role in committing rape and other forms of gender-based violence.<sup>82</sup> The UN Committee against Torture has observed that 'the failure of the

State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture [and rape] facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.<sup>83</sup>

As a State party to CEDAW, Thailand has an immediate and continuous obligation to condemn discrimination in all its forms, which includes ensuring women are protected against direct and indirect discrimination within legislation and also committed by state institutions such as the judiciary, public authorities and private individuals.<sup>84</sup>

The tolerance and tacit acceptance of certain forms of sexual violence in mainstream society and media propagates a 'rape culture'<sup>85</sup> which contravenes Thailand's obligations under international law to exercise due diligence to investigate, prosecute and punish rape and other forms of sexual violence within the Thai justice system. These cultural attitudes not only exacerbate a culture of impunity for sexual violence (a 'rape culture'),<sup>86</sup> but directly deny victims access to justice, remedy and reparations for gender-based violence.

One of the most blatant examples of gender-based discrimination can be found in the definition of rape and sexual violence (indecent acts) under sections 276 and 278 of the Criminal Code: the definitions for rape and sexual violence do not recognise lack of consent as a specific element of the offences. Instead, evidence of resistance, use of violence or coercion must be adduced to establish a crime of rape or indecent act (sexual violence). In other words, any sexual interaction with a victim who is not consenting (in the absence of other evidence of resistance, physical violence or coercion) is not recognised as a form of rape or sexual violence under Thai law. This comports with societal attitudes towards rape and sexual violence. In colloquial Thai, non-consensual sex is known as 'plam': it is not condemned outright as a crime or even a form of rape and is regularly featured on Thai television dramas and movies<sup>87</sup> and has some social acceptance.

Requiring evidence of physical harm to establish rape is problematic for several reasons. It reinforces a culture of sexual entitlement with an implied presumption that the victim is a passive (and accepting) recipient of sexual conduct: a presumption which must then be displaced by the victim through evidence of resistance, coercion, or use of violence. Framing sexual violence in this way is a form of discrimination against women. It has enormous implications in how rape and sexual violence are perceived in society; how victims are treated; how rape and sexual violence cases are investigated; how decisions to prosecute rape and sexual violence cases are made; and ultimately how a case of rape or sexual violence is adjudicated. It focuses the investigation, prosecution and adjudication on the conduct of the victim (e.g. was the victim behaving a certain way? Did the victim resist enough for it to amount to a crime of rape or sexual violence?)

instead of examining the actions and intent of the accused. It makes the victim more susceptible to 'victim-blaming'; and enables defendants to introduce evidence relating to the victims' behaviour, physical appearance and past sexual history as a basis to show implied consent.

In a 2007 study of Supreme Court judgments in rape cases over the past 50 years, it was found that Thai courts focused or placed significant weight on the victims' behaviour and injuries. 'If a woman has a wound, it means that she was struggling against the forced sex ... the more wounds and the seriousness of the injury make evidence stronger for the court to listen'.<sup>88</sup>

It has been further shown that Thai judges place greater emphasis on a victim's behaviour, applying a standard of the 'reasonable response of a victim' to inform their judgment on a legal finding of rape. For example, in the Thailand Supreme Court Case 4465/2530, the court held that the presence of a previous relationship between the victim and accused precluded the victim from bringing a complaint of rape.<sup>89</sup> The courts also looked closely at the issue of delay when considering the veracity of the victim's complaint; if a woman failed to take immediate action to report a rape this was considered to imply consent.<sup>90</sup> In Supreme Court Case 536/252, the court decided that the 11-year-old victim was in fact consenting to the rape on the basis that she did not cry out for help.<sup>91</sup>

### Rape: key cases

#### Public Prosecutor of Pichit Province v Tui Singhanath

##### Key points:

- Delayed reporting of rape
- Relationship as a sign of consent

#### Case 7.5 Public Prosecutor of Pichit Province v Tui Singhanath

The complainant and the defendant (a married man) worked together in a rice mill. The complainant was a relative of the defendant's wife. The complainant claimed that the defendant raped her twice, using force and a knife to threaten her. During the first rape, the complainant's mother was not yet working at the rice mill or staying with the complainant. During the second rape, the mother was on duty in the rice mill. On both occasions, the complainant did not shout or make any noise, and the defendant warned her not to tell anyone. She told her mother about the rapes only several days later, after they had stopped working at the rice mill. Her father asked the defendant to leave his wife and marry the victim, and when he refused, a rape case was filed against him. Witnesses testified that they knew of the demand by the father and that they observed that the defendant and the complainant were close prior to the demand for marriage, and had a relationship.

The Court considered the victim's failure to report the rape promptly to the mother, the filing of the complaint only after the defendant's refusal to leave his wife and marry the victim, and the witnesses' testimonies about the parties' relationship as suspicious circumstances and upheld the acquittal of the defendant by the Court of Appeal.

## The Public Prosecutor of Uttradit Province v Mr Jeerasak Uambhrom

### Key points:

- Attributed consent
- Previous sexual intercourse

The defendant was charged with taking away a minor of around 16 years of age from her father 'for lascivious reasons', without her consent. The defendant was convicted by the trial court and sentenced to three years' imprisonment. He appealed to the Supreme Court.

### Case 7.6 The Public Prosecutor of Uttradit Province v Mr Jeerasak Uambhrom

The Supreme Court of Thailand examined the testimonies of the litigants and found that the charge in question involved three incidents between the minor and the defendant. In the first, the defendant threatened her with a knife and raped her. In the second, the minor agreed to the sexual contact. In the third, the minor came from a ceremony accompanied by a neighbour, riding a bicycle, but when the bicycle tire was broken, the minor rode at the back of defendant's bicycle and left the female neighbour to find a ride on her own. Thereafter, while passing by a rice paddy, the defendant threatened her with a knife and forcibly took her to a nearby hut where he raped her twice. The court held that there was no rape because the minor had had coitus with the defendant with her consent prior to that incident, and that on the day in question, the minor went voluntarily with the defendant. While the charge was under section 318 of the Criminal Code, the court held that the defendant was guilty under Section 319 instead, which penalises a person taking away a minor under guardianship with the minor's consent. It also appeared that prior to the filing of the complaint, the defendant offered marriage but the parties could not agree on a dowry. The court considered this, as well as the fact that the defendant had no prior criminal record, and thus lowered the penalty to two years' imprisonment and a fine of 2,000 baht.

### Rape: Procedural weaknesses

Section 281 introduces a lesser category for rape and sexual violence. Sexual violence may be classified as compoundable offence when: (1) the victim is over 15 years of age; (2) the alleged act does not occur in public; (3) the alleged act does not involve a grievous bodily injury; and (4) the perpetrator does not exploit a position of trust or authority.<sup>92</sup> When an offence is classified as compoundable, there are a number of implications. The parties may settle the matter through informal negotiations. If the parties reach a settlement, the victim is required to withdraw the case, and the state is then precluded from proceeding with the matter through the formal justice system. A compoundable offence is subjected to a three-month prescription period; as such the victim is obligated to file a report to the police within three months from the date of the incident or the offence.<sup>93</sup> If the victim fails to file a report

or notify authorities within three months of the incident, they are precluded from any remedy or reparations for the offence. Finally, the sentences in compoundable offences are significantly lower than non-compoundable offences and do not have minimum sentences.

Classifying rape and sexual violence as compoundable is directly discriminatory; e.g., rape is not compoundable in Pakistan. It punishes victims who delay in reporting the rape or sexual violence. It undermines the gravity of sexual violence generally by minimising rapes or sexual violence without physical injuries. It also introduces serious protection concerns for victims who are unable to report due to the prescription period or otherwise. Finally, it directly excludes the victim from accessing the full ambit of remedies and reparations. Creating a two-tier system for rape and sexual violence contravenes Thailand's due diligence obligations under international law, and undermines victims' rights to access remedy and reparations for gender-based violence.

### Rape: Recommendations

The following recommendations are offered which may be helpful in bringing Thailand in compliance with its obligations under international law:

- Non-consent to sexual conduct should be enough on its own to establish the offence of rape and sexual violence. There should be no requirement of evidence of resistance, coercion, an act of violence or incapacity to establish the crime of rape.
- No adverse inference should be drawn from any delay in reporting or filing a police complaint in a case of rape or sexual violence.
- No evidence related to a complainant's character or past sexual history should be admitted in a trial of rape as it is not relevant.
- Rules or principles which reinforce e.g. the following discriminatory gender-based stereotypes should not be used:
  - (a) The 'normal reaction' requirement which suggests that if a woman does not react in a certain way, she is not a 'virtuous or good' woman and as such not trustworthy or credible;
  - (b) The 'corroboration rule' or 'cautionary rule' which suggests that women are inherently deceptive, hysterical and irrational, and thus objective evidence from additional sources is required to corroborate a complainant's testimony;
- Protection orders and other measures must be issued to ensure the safety and security of victims throughout the judicial process (pre-trial, trial and post-trial/sentencing).

- Publication bans, in-camera proceedings and other measures must be ordered during the judicial process to ensure the victim's right to privacy and confidentiality.
- Video-link testimony, screens or other visual barriers must be used to ensure victims are not required to face their perpetrator while testifying.
- Separate entrances and waiting areas must be available for victims before during and after court proceedings.
- Victim support and assistance personnel must be available and permitted to accompany victims throughout the judicial process (especially for children).

## Notes

- 1 Emma Fulu, Xian Warner, Stephanie Miedema, Rachel Jewkes, Tim Roselli and James Lang, *Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations multi-country study on men and violence in Asia and the Pacific* (UNDP, UNFPA, UN Women, UNV, Bangkok, 2013), pages 29, 40.
- 2 Ibid, page 41.
- 3 Ibid, page 42.
- 4 Ibid, page 43.
- 5 Ibid, page 43.
- 6 Ibid, page 43.
- 7 Ibid, page 44.
- 8 Ibid, page 44.
- 9 Ibid, page 44.
- 10 Ibid, page 44.
- 11 Janelle Retka and Khy Sovuthy, 'Rape Cases Up 64% in First Half of 2015, ADHOC Says', *The Cambodia Daily*, (Phnom Penh, 6 August 2015) <https://www.cambodiadaily.com/news/rape-cases-up-64-percent-in-first-half-of-2015-adhoc-says-90906/> accessed 6 December 2015
- 12 Emma Fulu et al (n1), page 45.
- 13 Constitution of Kingdom of Cambodia 2008, Article 31.
- 14 Ibid, Article 31 [2].
- 15 Ibid, Article 38.
- 16 Ibid, Article 45.
- 17 Criminal Code of the Kingdom of Cambodia 2009, Article 239.
- 18 Ibid, Article 239.
- 19 Ibid, Article 239.
- 20 Ibid, Article 239.
- 21 Ibid, Article 240.
- 22 Ibid, Article 242.
- 23 Ibid, Article 243.
- 24 Ibid, Article 244.
- 25 Cambodian Committee of Women, *Report on Violence Against Women: How Cambodian Laws Discriminate Against Women* (CAMBOW, 2007), [https://www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007\\_ENG.pdf](https://www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf) accessed 09 November, 2015.
- 26 Ibid.



- 27 Law on the Prevention of Domestic Violence and the Protection of Victims 2005, Article 7.
- 28 Ibid.
- 29 LICADHO, *Getting Away with it: The Treatment of Rape in Cambodia's Justice System*, (LICADHO, November 2015), <https://www.licadho-cambodia.org/reports/files/210LICADHOREport-GettingAwayWithRape2015English.pdf> accessed 13 December 2016.
- 30 Ibid.
- 31 See chapter 2, section 2.3 of this book.
- 32 UN Committee against Torture, 'General Comment No. 2, Implementation of article 2 by States parties' 24 January 2008, paras 18 and 22.
- 33 See chapter 2, section 2.3.
- 34 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
- 35 UN Committee against Torture, 'General Comment No. 2, Implementation of article 2 by States parties' 24 January 2008, para 18.
- 36 Ibid.
- 37 See chapter 2, section 2.5 of this book.
- 38 LICADHO, *Getting Away with it: The Treatment of Rape in Cambodia's Justice System*, (LICADHO, November 2015), <https://www.licadho-cambodia.org/reports/files/210LICADHOREport-GettingAwayWithRape2015English.pdf> accessed 13 December 2016, page 121.
- 39 Ibid, page 9.
- 40 Ibid, page 11.
- 41 Ibid, page 14.
- 42 See chapter 5, section 5.1 of this book.
- 43 Ibid.
- 44 '[T]he cultural belief is that legitimate victims file complaints promptly. Any time gap between the occurrence of the violation and the filing of the complaint is, in some cases, taken against the victims.' Evalyn G. Ursua, *Gender Stereotypes in laws and court decisions in Southeast Asia: A Reference for Justice Actors* (UN Women, 2016), page 56.
- 45 See para 6.52 and case studies; see also Evalyn G. Ursua, *Gender Stereotypes in laws and court decisions in Southeast Asia: A Reference for Justice Actors* (UN Women, 2016), page 59.
- 46 Ibid, pages 56–57.
- 47 National Crimes Record Bureau, 'Crime in India' (2014), <http://ncrb.gov.in/> accessed 15 November 2015.
- 48 Justice Verma, *Law Report of the Committee on Amendments to Criminal* (2012), <http://nlrd.org/wp-content/uploads/2013/01/121798698-Justice-Verma-Committee-report.pdf> accessed 7 November 2015.
- 49 The Criminal Law (Amendment) Act 2013, *The Gazette of India* (No. 17 of 2013), <http://indiacode.nic.in/acts-in-pdf/132013.pdf> accessed 12 December 2015.
- 50 Section 90 Indian penal code.
- 51 Ibid.
- 52 Section 376A of IPC.
- 53 Section 376C.
- 54 Section 376D.
- 55 Section 376C.
- 56 An NGO based in Karachi, Pakistan committed to work towards creating a rape free society, available at <http://www.war.org.pk/index.html> (accessed 22 November 2015).
- 57 A. Khan, 'WAR report 2014: Four women raped every day in Pakistan', *The Express Tribune* (Islamabad, 3 July 2015), <http://tribune.com.pk/story/913772/miserable-figures-rape-a-bigger-problem-than-meets-the-eye/> accessed 20 November 2015.
- 58 Ibid.
- 59 Ibid.

- 60 'No one asks to be raped', *Bangkok Post* (Bangkok, 19 September 2014), <https://www.bangkokpost.com/archive/no-one-asks-to-be-raped/433039> accessed 25 November 2015.
- 61 Ibid.
- 62 [This] figure is derived from a survey of criminal offences against the Thai population in 2012. E. Skinnider et al, *A Discussion Paper on The Trial of Rape- Understanding the criminal justice system response to sexual violence in India, Thailand and Viet Nam* (UN Women, UNDP, UNDOC and Unite, 2015), page 11.
- 63 Ibid.
- 64 Ibid, page 10.
- 65 UN Women, 'Strengthening the Capacity of the Thai Judiciary to Protect Survivors of Domestic Violence: Justice for Society's 'Little Dots'' (UN Women Regional Office for Asia and the Pacific, September 2013), [http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2013/promising\\_practice\\_report\\_final.pdf?vs=809074935](http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2013/promising_practice_report_final.pdf?vs=809074935) accessed 17 January 2017.
- 66 E. Skinnider et al, 'A Discussion Paper on The Trial of Rape – Understanding the criminal justice system response to sexual violence in India, Thailand and Viet Nam' (UN Women, UNDP, UNDOC and Unite, 2015), page 42.
- 67 Ibid.
- 68 Ibid.
- 69 Ibid, page 10; see also C. Satrusayang 'Decoding the concept of rape in Thai Society: comparative case studies between media viewers and the victims of rape' (MA Thesis, Faculty of Media and Communications, Tammasart University, 2003); see 'Rape Culture in Thailand' *Under the Ropes* (Bangkok, 1 April 2016), <https://undertheropes.com/2016/04/01/rape-culture-in-thailand/> accessed 15 January 2016.
- 70 The Criminal Code B.E. 2499 (1956) As Amended until the Criminal Code (No. 21) B.E. 2551 (2008), section 276.
- 71 Ibid, section 276, para 2.
- 72 Ibid, section 276.
- 73 Ibid, section 276, para 3.
- 74 Ibid, section 277.
- 75 E. Skinnider et al (n66).
- 76 The Criminal Code, section 277, para 3.
- 77 Ibid, section 277.
- 78 See chapter 2, section 2.3 of this book.
- 79 UN Committee against Torture, 'General Comment No. 2, Implementation of article 2 by States parties' 24 January 2008, paras 18 and 22.
- 80 See chapter 2, section 2.3 of this book.
- 81 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
- 82 UN Committee against Torture, 'General Comment No. 2, Implementation of article 2 by States parties' 24 January 2008, para 18.
- 83 Ibid.
- 84 See chapter 2, section 2.5 of this book.
- 85 'Rape Culture in Thailand' *Under the Ropes* (Bangkok, 1 April 2016), <https://undertheropes.com/2016/04/01/rape-culture-in-thailand/> accessed 15 January 2016.
- 86 Ibid.
- 87 Ibid.
- 88 Somchai Preechasinlapakun, 'Gender Bias in Thai Supreme Court's Verdict' (October 2007) <http://www.law.cmu.ac.th/law2011/journal/7633.pdf> accessed 12 December 2016.
- 89 UN Women, *Southeast Asia Regional Judicial Colloquium on Gender Equality Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice* (UN Women, 2013) [http://cedaw-in-action.org/en/wp-content/uploads/2016/04/2014\\_Gennder-Equality-Jurisprudence.pdf](http://cedaw-in-action.org/en/wp-content/uploads/2016/04/2014_Gennder-Equality-Jurisprudence.pdf) accessed 20 December 2016.

90 Somchai Preechasinlapakun, 'Gender Bias in Thai Supreme Court's Verdict' (Chiang Mai, Thailand, October 2007), <http://www.law.cmu.ac.th/law2011/journal/7633.pdf> accessed 25 November 2016.

91 Ibid.

92 Criminal Code, section 281.

93 Criminal Code, section 96.