

Understanding the Mindset and Behavior of Male Perpetrators of Rape

A Pre Scoping Study

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Abbreviations

CEDAW: Convention on the Elimination of Discrimination Against Women

COVID: Corona Virus Disease

CSE: Comprehensive Sexuality Education

DHS: Demographic Health Survey

FJS: Foundation for a Just Society

GBV: Gender-based Violence

INSEC: Informal Sector Service Center

MOHP: Ministry of Health and Population

SGBV: Sexual and Gender-based Violence

SLC: School Leaving Certificate

VAW: Violence Against Women

WHO: World Health Organization

WOREC: Women's Rehabilitation Centre

Acknowledgments!

As we commemorate 30 years of our journey in addressing violence against women and girls Saathi reiterates its strong commitment to initiate all effective and innovative interventions to prevent violence against women and girls. With the increasing incidents of sexual violence that comes to Saathi's Shelters it has now become key to understand the psyche and mindset of male perpetrators for effective prevention programs. In this regard I am confident that the findings of this pre scoping study on "Understanding the Mindset and Behavior of Male Perpetrators of Rape" will guide us as well as other collaborators in designing and implementing better informed sexual and gender based violence prevention programs.

I would like to express my sincere gratitude to our past president and CEDAW Committee Member Bandana Rana for envisioning this study and leading the study to a successful completion. Her passionate and persistent advocacy against gender based violence and her continued guidance to Saathi is greatly appreciated.

Interviewing unapologetic male perpetrators confined to their prison walls, is an uphill task to complete. This was only possible with the engagement of former Information Commissioner Yashoda Timsina and prominent journalist and rights activist Babita Basnet. They therefore, deserve a special accolade for the important contribution they made in coordinating with government agencies, finding appropriate respondents, and collecting the data despite legal hurdles and practical hassles. This research report would not have been so concise, coherent and cohesive had it not been for the critical assessment and skillful writing of Antara Singh. Her flair for writing has enhanced the quality of this report and I thank her heartily.

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Last but not the least my deepest appreciation to the valuable support provided by the Foundation for a Just Society (FJS) without which it would not have been possible to undertake this important study.

Sajani Amatya
President
Saathi

Foreword!

Saathi started its mission of building a violence-free society in 1992 by primarily addressing domestic violence against women and girls. The organization was focused on awaring and capacitating women and girls, providing them safety and security and empowerment opportunities. It sensitized community women and girls at risk and survivors of violence of all diversities. Over the years it has expanded its focus on addressing other broader forms of violence as well including sexual violence, trafficking, harmful traditional practices, conflict related violence and violence faced by migrant women.

Over the year's advocacy was launched and movements were built for policy change, reformation of law and introduction of new legislations in addressing violence against women and girls. Most of Saathi's programs in the first half of its 30 years' journey was targeted to women and girls. However, in the course of its work, Saathi realized that the engagement of men and boys was completely missing in all its endeavors to prevent violence against women and girls. With this realization since 2011 Saathi started Engaging Men and Boys in its violence prevention interventions. Influential male change makers were identified and oriented, trained, and sensitized on gender issues, harmful traditional practices, and legal provisions to strengthen community response against gender-based violence. This has resulted in many positive outcomes.

With recent increasing incidents of sexual and gender-based violence (SGBV) particularly rape among minors and in school settings, we felt a strong need to understand the mindset of male perpetrators of violence. We planned to start with a small pre-scoping study. This study, though not an intense one attempts to shed light on the behavior and mindsets of male perpetrators, especially those involved in sexual violence including rape.

Each perpetrator's story and field expert's knowledge is important and can be helpful to identify what should be done to make laws and institutions more secure and safer for women and girls.

The findings of this pre scoping study I hope will help in the prevention and protection of SGBV with deeper knowledge of perpetrators' mindsets. It is also envisaged that this study will provide input on required behavioral change interventions related to sexual violence prevention. As this pre scoping study with limited sample survey is only an indicative one, a more in-depth and intense study may be required to understand the issue more deeply and to inform the SGBV prevention interventions with new dimensions and solutions.

Bandana Rana
Research Lead
(Co-Founder and Past President of Saathi)

Executive Summary

This pre-scoping study is initiated to provide a basis of understanding on characteristics and behavior of male sexual assault perpetrators and impacts upon them in order to contribute to the rape and sexual violence legal framework, status of implementation, available tools and programmes implemented by both government and non-government institutions. The effort is undertaken by setting up a team of experts on law and human rights, practitioners handling rape cases at different institutional points, activists and officials at both policy and field levels. Spanning by a random sampling method among nine perpetrators and four key informants, the findings are gathered through the integration of modalities of desk research, literature review, questionnaires, interviews and outreach to interviewees and case studies. As the work of the team is of limited scope and size the study is particularly organized with the expectation to initiate inquiry into the field, and with the hopes to bring new policy and programmatic discussions in Nepal moving beyond the victims based framework to a more holistic approach that includes the mindset of the perpetrators. The results from this research are tabulated in round-off percentage levels figures to reflect the scope of weightage of the concerns herein raised which can in the form of quick numbers feed for policy implications.

Key findings: The pre-scoping survey confirms some of the outcomes of previous studies which have pointed to; **(i)** the high prevalence of these crimes to take place amid acquaintances rather than strangers (89%), **(ii)** correlation of tendencies of substance abuse, both alcohol and drugs to perpetration of acts of rape (67%), and, **(iii)** their lack of awareness on impacts of rigid patriarchal norms and its linkage with the normalization of rape attacks (100%). The study also brings to light less discussed characteristics and behavioural traits of the perpetrators, which needs more attention, such as conviction for the crimes being increased with; **(iv)** persons coming from nuclear (70%) or unconventional families or being raised in single-parental or by others than parents (56%), in particular those belonging in youth groups coupled with financial hardships (56% below 20 years and 33% between 20-30 years), **(v)** inadequate sensitization on consequences of such acts including through lack of age-appropriate comprehensive sexuality education from early ages (100%), and, **(vi)** deep-rooted attitude bearings of ignorance about rape being a criminal offence and the seriousness over consequences for the commission of such acts (67%), **(vii)** the shortcomings in the legal and justice system in abilities to punish the actual culprit or in cases where actual perpetrators are sentenced, psychological support measures have not been adequate to induce the feeling of repentance that is an important basis for any form of successful community reintegration (56% felt legally and disproportionately framed for punishment).

Groundbreaking research publications on understanding VAW, point that the ‘driving forces behind, and the motivations for, sexually aggressive behavior mainly stem from the basis of power and control, not, as is widely perceived, sexual desire’. Statistics show that in the last ten years cases of rape have been increasing in Nepal every year by 20 per cent.¹ In assessing the implementation of rape laws, policies and practices by an in-depth study among South Asian countries, it was highlighted that out of thousands of rape cases filed every year, 65.2 percent do not get a conviction in the region², which point to the problem that the perpetrators and the potential offenders and the roots of their behaviors remain largely ignored.

The study moreover makes the assessments based on the findings that adequate attention needs to turn to the premises of the behavioural issues of perpetrators, which are linked to the step of manifestation of acts of rape, the roots being; (i) lack of knowledge of rape as a criminal offence, (ii) vulnerable spaces defined by gender segregations within close proximity, (iii) use of power dominance tool for varied motives, (iv) denial of the act as a wrongdoing, and, (v) long persistent gaps in criminal justice system.

¹ Data from Nepal Police as quoted in *Rising Nepal*, 7 April 2021.

² The report, ‘Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors’, has surveyed rape laws, Equality Now and Dignity Alliance International, April 2021.

Policy implications: For systemic change to hinder potential creation of the perpetrators, this study finds that various institutions in Nepal have to take substantial steps on the front of assessing criminal justice system not limited on the paper, but on action. This entails apart from introducing, repealing and amending laws that govern the perpetrators, due emphasis should be given for instituting norms and mechanisms for actual practices on the ground for prevention measures in the communities, applying methodologies in connection to the cases handled by the judiciary, law enforcement officials, and, for building effective management of prison systems towards reforms of the perpetrators. The study provides specific set of recommendations to the government, school and community, police institutions, legislation and judicial system, and prison and correctional centers. To highlight some important points the pre-scoping study recommends to;

- (i) Integrate a preventive awareness and norm-instilling educational approach by the government at various entry points at community levels such as schools and various service centres
- (ii) Establish early warning systems and mechanisms to target youth groups through collection of data on deviant behaviours
- (iii) Allocate sufficient budget for local governments in the federalized system to carry out awareness raising programs at various entry points at community levels, such as schools, health centers, counseling, media, transportation services, legal services, and employment services
- (iv) Establish specialized sex crime units within police institutions and rape-crisis support centres in communities with specialized trainings to investigators
- (v) Adopt Act on Rape (currently in the form of a draft), based on adequate consultations with all relevant stakeholders, which integrates good practices and methods for prevention and restoration of rape perpetrators
- (vi) Provide adequate access and support to the perpetrators that allow their restoration and reforms by also addressing the psychological impacts
- (vii) Establish a system by the local criminal justice agencies to monitor the implementation of policies, court judgments and support programmes in view of the perpetrators, families, especially their children
- (viii) Reform the judicial system in its abilities to accurately identify/punish the perpetrators and determine coherent sentences by the judicial authorities through application of behaviour-correcting tools proportionate to the gravities upon the perpetrators in relation to their age, backgrounds, mindset, intentions, and the set of inciting factors leading to the commission of crimes
- (ix) Implement effectively “Basic principles on the use of restorative justice programmes in criminal matters” which outlines that guidelines and standards should be established for the use of restorative justice programmes and the “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”, which provide guidance on good principles and practice in the treatment of prisoners and prison management

Contextual Background

Rape and sexual assaults are serious criminal offenses in Nepal, with perpetrators facing prison sentences ranging from seven to twenty-five years. Over the decades, while there have been considerable attention and efforts from a rights based perspective of the victims for reforms in criminal justice system within Nepal, across the region and globally, there are persistent gaps in the understanding of such crimes from the viewpoint of perpetrators and intervention modalities for their deterrence. What drives the perpetrators in committing or attempting to commit acts of rape within the contextual set up of a given society and how can these be addressed? This pre-scoping research study aims to understand the nature of acts of rape perpetration, including the common characteristics of perpetrators who commit sexual violence particularly rape, and behavioral patterns among the male group of offenders. The report provides a summary of findings from the review of the body of literature, case studies, and especially through one-to-one interviews with perpetrators and related stakeholders.

Saathi has been long engaged in the area of raising awareness and conducting advocacy against rape and sexual violence cutting across areas of stigma, stereotypes, impunity, and rehabilitation of survivors/victims including through providing them with life skills. The programs implemented by Saathi have been effective through critical engagement with government entities at the local and national level¹ for strengthened accountability, sustainability of programs and building synergy among other programs. This pre-scoping study aims to maximize the impact of findings and recommendations in an area which has been persistently and largely ignored, as a result of which there remain gaps in a holistic approach to reducing and eliminating SGBV from the direction of the mindset of the male perpetrators.

The ambit of understanding from the perpetrators' standpoint is important for effective prevention of the crimes and to inform legal and policy changes in both the national and international sphere. Policies, law and strategies to provide justice to survivors/victims fall short without the understanding of the underlying dynamics regarding the mindset of perpetrators. Some set of drivers in the perpetration of the crime of rape by male perpetrators may have core basis spanning over the eras while other drivers may be shifting overtime with the newer forms of societal changes. Thus there is a need to scope, deliberate, define and identify adequately areas of intervention based on the shifting contexts.

Several studies have found that men's endorsement of rape myths, hostility towards women, endorsement of traditional gender roles, and hyper masculinity are related to rape violence against women. Studies point to other additional reasons such as; lack of awareness on women's rights, alcohol consumption, unemployment, poverty, and access to new kinds of sexually inciting content that have increased with rising use of technology. The perpetrators of rape crimes are predominantly the beneficiaries of the gender power relations amid the existing social set-up. But on the other hand, the overall situation of impunity in fragile societies easily encourage as well as create future perpetrators which keeps on giving space to fears and insecurities of various forms of GBV against women. Non-intervention to correct this cycle increases the socio-economic cost on growth and development of the society particularly in countries like Nepal, which is already vulnerable from the emergence of recent past internal conflict and gearing towards peace and stability.

Numerous research have well evidenced that women and girls are most vulnerable to forms of GBV including rape from people who are close to them. These findings are supported by the results of the (Nepal DHS, 2011), where the most common perpetrators of both physical and sexual violence were current husbands (Population Division MOHP, 2012). This study reconfirms that patriarchal norms

¹ Programs have included access to justice, empowerment, support, advocacy and network programs for the protection and promotion of rights of women and girls in Nepal, such as Advocacy against domestic violence, Promoting Gender-Based Violence Free Society, Keeping the Beijing Torch Alive, 16 days of Activism against Gender-Based Violence, UNSCR 1325 & 1820, Engaging Men and Boys.

entrenched in the roots of the communities, lack of education and inadequate sensitization at all levels lead to demonstration of faulty notions of masculinity in the form of rape and forceful sexual advances. Awareness level among the perpetrators show that most are unaware that acts of rape are both legal and moral wrongdoings. The imbalance of power is embedded in the mindset of the society so much so that a survey by the Government of Nepal showed that only 9% of respondents were aware that rape within marriage is illegal. The legal leniency on men who rape their wives also reinforces the power imbalance between husbands and 'their' wives.

The social and economic costs of rape and sexual violence are enormous and have ripple effects throughout society. Family members suffer isolation, inability to work, loss of wages, lack of participation in regular activities and limited ability to care for themselves and their children. In a post pandemic context, the number of rape and sexual violence incidents are on alarming trends amid the socio-economic challenges negatively affecting most population including in Nepal. Increasing urbanized lifestyles were already causing problems of isolated fragments of populations detached from past rubric of communal living; migrant workers living distant from families, and shifts in ways of working with higher representation of women in labor forces were bringing to the fore newer spaces where women and girls could be rape targets. Dramatic shift of life on digital platforms in the recent years, which are being pivoted to identify easy potentials for ensuing rape attacks have also heightened women and girls' vulnerabilities.

Current models of punitive and restorative criminal justice models have not adequately integrated the importance of involvement of the community and families for prevention of perpetration of such acts of sexual violence. Thus, it is imperative to build effective alternative prevention and restoration models. Restorative outcomes include restitution, community service and any other programmes or responses designed to accomplish reparation of the survivor/victim and community, and reintegration of the survivor/victim and/or the offender.² Evidence suggests that restorative justice interventions can support the rehabilitation of rape offenders.³ They encourage a genuine acceptance of accountability, sincere expression of remorse, motivation to participate in therapeutic treatment and a personal journey of transformation. Supporting desistance from crime with the focus of many intervention approaches with rape offenders can yield transformative effect on the experience of shame for victims, offenders and their families, although these experiences can be different.

2 "The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms", Centre for Innovative Justice (2014), "Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community", Bolitho, J. & K. Freeman (2016). Restorative justice offers victims the chance to reclaim their voice, not as a victim but as a survivor.

3 Restorative justice model in rehabilitating perpetrators includes assessment of the participants (suitability versus eligibility); risk assessment; thorough preparation; interagency cooperation between experts on sexual offending, victimisation and treatment; flexibility and sufficient allocated time; mediators/ facilitators with knowledge of the power and control dynamics of sexual violence and of the effects of trauma, with a special training in facilitating a restorative justice encounter in the complex cases.

Purpose and Methodology

Purpose

The benefits of undertaking this project would be multi-fold. Pre-scoping studies represent an increasingly useful approach to emerging evidence, such as in areas of identifying modalities of prevention and rehabilitation. A deeper understanding of how and under what circumstances factors are associated with rape will be the outcome findings that can support in determining where to focus prevention and rehabilitation efforts of perpetrators as regards the crimes of rape and sexual violence against women and girls.

As stated earlier, thus far, the traditional criminal justice models have largely centralised on punitive approach to the perpetrators and restorative measures for the victims. This study initiates and builds on for undertaking of a broader approach by identifying particular needs from the perpetrators' perspectives and comprehending the root causes.

The pre-scoping results can be used to set reliable target indicators and future interventions. With the availability of the pre-scoping finding, benchmarks can indicate the prevalence, nature and characteristics of sexual violence against women and girls for other projects that work on the topic area. The findings as the basis for future analysis, can serve critically to assess change over time.

Highlighting which normative shifts are necessary can bring about positive change in family relations at interpersonal and household levels in the long term. Since the punitive approach of legal and regulatory measures for the occurrences of rape crimes have not been adequate to deter the potential perpetrators, this study will bring into attention to the stakeholders including the government entities on the mobilisation of alternative tools that can be available within a given community.

Objectives, Scope and Limitation

The objective of this pre-scoping study undertaking are;

- (a) To understand the characteristics and behavior of male sexual assault perpetrators
- (b) To assess the perception of perpetrators and stakeholders with regard to commission and attempts of rape offence
- (c) To provide key recommendations for prevention of rape and a more effective restoration/rehabilitation of the perpetrators
- (d) To contribute to the prevention of rape and sexual violence against women and girls from a more holistic approach that encompasses the understanding of characteristics and behaviors of perpetrators.

The scope of work for the purpose of this study includes interviews with perpetrators and stakeholders, consultations with experts working in the field, development of recommendations to the relevant bodies and institutions in Nepal. Pursuant to the conduction of the study and an outcome report, other activities to build on the study incorporates developing key messages for media engagements, dissemination of findings and strategic advocacy.

The study topic is limited to the study of male perpetrators in relation to female victims. While rape and sexual violence occurs across all genders, ages and settings, it is the aim of the study to just focus on the more rampant group of perpetrators which factual data supports to be overwhelming number of men committing such offence against women and girls. The report is confined in its capacity to conduct the approach of work with development of questionnaires, conduction of interviews with perpetrators and stakeholders, referencing data and secondary sources of literature.

The small sample size of perpetrators and key informants is based on random selections of network based referrals.

Methodology

The study is designed with the proceedings of desk research, literature review, random selection of perpetrators and outreach to key informants/experts in the field, formulation of questionnaires, conduction of interviews to research participants, and outlining of important case studies. Perpetrators come from all various age groups and backgrounds, and, the key informants include senior legal officials, judge, police, advocate, human rights activists and counselors. Pursuant to collection of data and information, key assessment and findings are drawn, based on which recommendations are formulated.

Legal Framework and Trends

Defining rape: Rape, unlawful sexual activity, most often involving sexual intercourse, against the will of the victim through force or the threat of force or with an individual who is incapable of giving legal consent because of minor status, mental illness, mental deficiency, intoxication, unconsciousness, or deception. Although rape can occur in same-sex intercourse, it is most often committed by a male against a female. In many jurisdictions, the crime of rape has been subsumed under that of sexual assault. Rape was long considered to be caused by unbridled sexual desire, but it is now established as a pathological assertion of power over a victim.

The legal definition of rape globally and including in Nepal, has changed substantially since the late 20th century. Current Criminal Code of Nepal, adopted since 2017 defines rape as “sexual relations with a woman without her consent and with a girl under the age of 18 with her consent”. The traditional definition was narrow with respect to both gender and age and mainly involved forceful penetration to be established by a man with signs of physical harms and injuries against a woman of a stranger context. Gradually, elements establishing rape got expanded within the legal scope. As rape is now understood, a rapist or a victim may be an adult of either gender or a child. There is also an increasing tendency by many countries to treat as rape an act of sexual intercourse by a husband with his wife against her will, which is legally recognized as offence of marital rape.

Nepali society has been witnessing rampant and widespread rape and sexual and gender-based violence (SGBV) since a long period of time. Despite advancements in stringent laws on paper, increment in number of prosecutions and sentencing for perpetrators committing such crimes, various news sources and assessments consistently point that the incidences in the number of rape cases every other year continue to be on the rise. While it is true the awareness to voice the occurrence of such crimes have increased; weak criminal investigations, attempts by officials to protect perpetrators, the politicization of rape cases and dilly-dallying in delivering justice, have collectively led to a worsening of the problem to what the experts view as an area saddled with impunity.

Existing status of implementation: The increased number of cases of rape against women, in recent years is not just a matter of criminal law. Women and families who are subjected to rape are denied the right to a dignified life, reflected in the guarantees of the Nepali Constitution and law and international human rights instruments. The 2015 Constitution guarantees the rights against sexual violence as a fundamental right. Article 38(3) states, “No woman shall be subjected to physical, mental, sexual, psychological or other forms of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with the law.

Analysts have recognized that violence against women is a disturbingly common occurrence that is deeply rooted in the mindset and patriarchal attitudes that exist throughout the country. Patriarchal social norms, as well as the persistence of discriminatory harmful practices, the normalization of violence and the social stigma attached to reporting violence, continue to pervade society at all levels, disproportionately affecting women and girls, in particular those from marginalized groups, who face more number of intersecting and multiple forms of discrimination.

The recent substantial reform of the legal system, including the adoption of the new Constitution and the Sexual Harassment at the Workplace (Elimination) Act of 2015 and the enactment of the new National Penal Code of 2017, together with the Criminal Procedure (Code) Act of 2017, the Criminal Offences (Sentencing and Execution) Act of 2017, the National Civil Code of 2017 and the Civil Procedure (Code) Act of 2017, have brought significant legal changes, namely, by introducing key provisions from the rights based perspectives of victims to further protect the rights of women and enabling progress towards ending violence against women. Holding perpetrators accountable to the crime including with more rigid sentencing in punitive measures by the legal system has

been a great focus over the past decades in Nepal, however, provisions for reforms of the perpetrators and other preventive community approaches, check and balance system to monitor the delinquent behaviors including by juveniles to detect and address early symptomatic roots of the behaviors and characteristics are not yet encompassed within Nepal's legal and policy set up.

Nepal is a party to seven of the nine principal international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, which it ratified in 1991, together with the Optional Protocol thereto, which it ratified in 2007. It has yet to ratify a number of other core United Nations human rights treaties and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Under the new federal system, judicial committees have been established at the local level as a means of facilitating access to justice for women, in particular those living in rural and remote areas. The committees, 90 per cent of which are led by women, are chaired primarily by the Deputy Mayor or Vice-Chair (the vast majority of mayors are male) and include women representing minority groups, including women from Dalit and indigenous communities. While scoping their functioning, the UN Special Rapporteur (on violence against women, its causes and consequences) has highlighted the main challenges that despite the promising statistics and high expectations, the lack of legal expertise and knowledge of gender-sensitive investigation procedures among committee members, as well as the unclear relationship between the committees and court procedures, the limited financial resources, the insufficient coordination between federal, provincial and local structures and the quasi-judicial and political nature of the committees, results may be limited.

In chapter 18 of the National Penal Code of 2017, a number of sexual offences are defined and prohibited, and penalties are provided for the perpetrator. However, the Code fails to adequately criminalize rape and other forms of sexual violence in line with international law. While the Code, in section 229 (2), extends the statute of limitations for the prosecution of cases of sexual violence to one year which is still too short in view of the time that takes most women and girls to come out of fears and stigma attached to the crime. Many countries around the world have done away with limitations on rape cases. In Nepal, the short limitation period of one year for filing rape complaints is an impediment to justice including from the viewpoint of perpetrators who do not get a chance to go through behavioral reforms. Following the landmark Supreme Court decision of 2003, marital rape is now considered a crime under law, and, under the National Penal Code of 2017, the punishment for marital rape was increased to five years in prison. However, rape and sexual violence within intimate partner relationships is still largely a taboo subject, with low levels of reporting. It is interesting to note that the trend in Nepal reflects that when intimate partner rape and sexual abuse is reported, it is often less likely to result in prosecutions and convictions than assault by a stranger.

In Nepal, generally five forms of punishments are present for perpetrators committing various degrees of crime; imprisonment for life with forfeiture of property, imprisonment for life, imprisonment for certain years, fine, combination of different forms of punishment. The recent Penal Code has primarily emphasized on the proportionality between crime and punishment. Furthermore, in the past decade, with the influence of more advanced notions of punishment to perpetrators, Nepal's laws have also incorporated provisions of compulsory work labor and sending them to reform homes. Aggravating and mitigating circumstances of the offence of rape are also provisioned in the set of laws. Consideration of gravity of crime, confession of offender, cooperation of the accused in collection of the evidence and detention of other accused and abettors are mentioned as the factors mitigating or aggravating the term of sentence. The Code has provided more discretion to judges while assessing punishments. Similarly, wide discretion has also been provided in determining fine which the convict is required to pay within a year in not more than three installments. As regards the application of compulsory work labor and reform home, the Code provides that person between 25 to 45 years, sentenced upto 3 years of imprisonment, can be sent for work at state-run project in place of prison. Likewise, convicts serving upto 1 year of imprisonment can be sent to reform home. In the cases of juvenile delinquents, provision for partial punishments is made with more emphasis on their reformation. Although different forms of punishment methods have been tried, restorative

and reformative approach of provisions are not adequately ensured in the existing legal system. The overall trend of the verdicts of the judges have indicated that the sentences have been largely passed for the perpetrators in view of punishment rather than their restoration.⁴ Experts in the field point the necessity of introduction of presumptive sentencing model, parole and probation should be new pathways in view of broader deterrence, prevention and of such crimes.

Although positive the overall efforts being made to improve access to justice with constitutional safeguards of legal aid to every person in Nepal, challenges include the lack of training for the police and judiciary to enable them to adopt human rights approach when investigating cases, the social stigma associated with reporting and the general lack of awareness among both victims and perpetrators. The economic dependence of women on their husbands and in-laws, lack of adequate shelter homes to support vulnerable women and girls, and, geographical and linguistic constraints are significant factors which attaches power status of the perpetrators to be unchanged thus giving them lesser incentive to substantially change their mindset of patriarchy based dominance and abuse of powers. Preventive measures and measures to ensure the compensation, rehabilitation and protection of victims, and the low level of implementation of court judgments, including judgments to grant compensation are other issues of concern, which add to the risk factors for non-deterrence to commit such crimes to potential perpetrators.

Statistics and recent patterns

According to the data recorded by Nepal Police, cases of rape and attempts to commit the crime in the country have increased significantly in the last decade. A total of 17,790 women and girls were raped in the last ten years and it has been found that the cases of rape have been increasing every year by 20 per cent. WOREC Nepal's records reflect 144 cases of rape and 687 cases of attempt to rape were registered in the fiscal year 2020-21. Collection of unregistered cases adds to the figure of 1,221 women and girls as raped in the same fiscal year. The data shows that on average, seven women or girls are raped daily in Nepal. A VAW study report published by INSEC has mentioned that the cases increased this year. Data from the Nepal police also shows that the reporting of cases increased significantly to 2,144 cases of rape and 687 cases of attempted rape in 2019-20 in comparison to the 1,480 reported cases of rape and 727 cases of attempted rape in 2017-18. The number doubled in the year 2020 as over 1,400 cases of sexual offense were confirmed. All these reports portray a blatant disregard of women's rights and no change in the mindset of the perpetrators.

The stakeholders and activists have been voicing that physical, mental, and sexual torture and gender-based discrimination, inequality, and injustice have been the persisting reasons behind the increase in VAW cases. WOREC Nepal, which has mapped the trends and patterns extensively within the country has consistently pointed that while rape and sexual violence are committed by men coming from all backgrounds, however data indicates in higher figures that most perpetrators come from privileged castes and class group of Nepal who target women and girls from marginalized communities.

The actual number of rapes is believed to be much higher as most cases are often not reported to the police. Just as often, rape cases are resolved by mediators and informal village panchayats, however, as per recent legal amendments, out-of-court mediation in cases of rape, have been outlawed and criminalized⁵. While this aims at addressing impunity and increasing accountability of the perpetrators, yet, without a framework and implementation to effectively handle the perpetrators in cases of rape through the lens of reform, restoration and the latter community integration. The report further states how even police personnel act as mediators between the perpetrators and the victims, encouraging financial settlements rather than going to court.

Numerous emblematic cases where impunity led to communal violence in cases of rape and sexual

⁴ "Sentencing Policy in Nepal", Ganesh B. Bhattarai, Kathmandu Law Review, Vol. 1, No. 1.

⁵ Ordinance to amend sexual violence related provisions (2020) in Senior Citizens Act 2006, Muluki Criminal Code 2017 and Muluki Criminal Procedure Act 2017.

violence have been time and often observed in Nepal. Last year, in September 2020, massive level of protests took place after a 12-year-old Dalit girl from Bajhang district went missing. Her semi-naked body was recovered by family members at the nearby temple. Autopsy reports confirmed that the young girl was raped. In another case the same year, a teenage gang-rape victim took her own life in Saptari after she was reportedly forced into an out-of-court settlement by the village elders. Activists have also noted a spike in rape and acid attack cases during the COVID-19 pandemic, including a gang rape of a migrant woman in the quarantine facilities of an empty school.

At the highest levels, the speaker of Nepal's lower house of Parliament had to step down and resign after being accused of rape by an employee. By February 2021, he was acquitted of all charges, resulting in nationwide outrage over the "ingrained impunity" in the system. Among the reactions demonstrated in the public and social media, it was notable that at social level, discussions took place at lengths pinning on the faulty notions such as the occurrence of rape in the first place is due to the outward display of girls with their improper attires and such other indications of inviting sexual advances. Legal proceedings most often bring up 'character' of the victim as a factual presentation of evidence by the defense team, laying out the sexual history of the victim in an effort to provide leverage to the perpetrators, creating a cycle of perpetuation of framework of faulty norms which can easily enable new perpetrators. This mindset continues to be expressed including at the level of leaderships and politicians who make such comments and contribute to normalizing and legitimizing such behaviors. With access to a lot of information increased through social media available at everyone's fingertips, such reinforcement of the mindset has posed a major problem how modern use of technology and its information content is not convincing the misogynists but instead is fueling them for their wrongdoings.

In assessing the implementation of rape laws, policies and practices in six South Asian countries, 2020— Bangladesh, Bhutan, Nepal, the Maldives, India, and Sri Lanka, there has been a conclusion that rape laws are insufficient, inconsistent, and not systematically enforced in the whole of the region.⁶ Out of thousands of rape cases filed every year, 65.2 percent do not get a conviction in the region, which point to the problem that the perpetrators and the potential offenders and the roots of their behaviors remain largely ignored. The law fails to take into account the stigma, shame, intimidation and trauma of both victims and perpetrators associated with rape. Although there has been some progress on awareness and trainings to law enforcement officers in relation to victims of rape and sexual violence, however much remains to be done for efforts towards setting up of a system and to train the officials in dealing with perpetrators of rape and sexual violence. Intervention tools to keeping in view of the characteristics and behaviors of perpetrators in the whole process of investigations, prosecutions and sanctions need to be developed and applied for more effective and broader outcomes of justice.

Assessment based on Literature Review

This section explores from the existing literature on what is known about the characteristics and behaviors of the rape perpetrators and the direction of the work, publications and discussions in Nepal.

Groundbreaking research publications on understanding VAW, point that the 'driving forces behind, and the motivations for, sexually aggressive behavior mainly stem from the basis of power and control, not, as is widely perceived, sexual desire'.⁷ WHO's elaborate definition emphasizes that the act of sexual violence is a 'violent, aggressive and hostile act used as a means to degrade, dominate, humiliate, terrorize and control women, and very rarely, it is a crime of passion'.⁸ Through their numerous manuals and guidelines of the WHO on the matter of addressing sexual violence, it

⁶ The report, 'Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors', has surveyed rape laws, Equality Now and Dignity Alliance International, April 2021

⁷ "Understanding Violence Against Women", Nancy A. Crowell and Ann W. Burgess, 1996

⁸ Guideline chapter, "Sexual violence: prevalence, dynamics and consequences", WHO.

highlights that the ‘hostility, aggression and/or sadism displayed by the perpetrator are intended to threaten the victim’s sense of self compared to the sense of entitlement of the perpetrator’.

Acts of rape and sexual violence violates a victim’s sense of privacy, safety and well-being. Not all perpetrators have the same motivations for committing rape, nor are they similar in the way that they commit sexually violent acts. Anger, power and sexuality are nevertheless elements that are always present, irrespective of the reason for the sexual violence or the nature of the act committed. Some common themes pertinent to the underlying reasons that perpetrators justify with that have emerged serves to compensate for feelings of helplessness, to reassure the perpetrator about his sexual adequacy, to assert his identity, to retain status among his peers, to defend against sexual anxieties, to achieve sexual gratification, and to discharge frustration.

“Asia Foundation’s Study on GBV Conducted in Selected Rural Districts of Nepal”, 2012, finds that some of the factors leading to violence were located at the social and structural levels. For example, ‘women’s relative poverty compared to men, and their isolation from the wider community, were said to underlie many of the vulnerabilities exposing them to the risk of violence’. Exclusion from educational and employment opportunities was identified by the key stakeholders as an important contributor to women’s vulnerability to violence. Women’s position within male-dominated social structures (family, community, social and economic structures that privilege men over women, and sociocultural practices such as dowry and polygamy) contributes both to women’s vulnerability and to their lack of autonomy and agency to respond to threats of violence.

In addition to social/structural drivers of violence, men in particular identified several factors at the individual level, including abuse of alcohol and increasing access to “modernization” (e.g., pornography on mobile technologies). The same study outlines that the ‘perceived barriers women face in seeking services include fear of further violence (36.9%), getting help was the long distance to services (15.9%), pointing to lack of knowledge of the law and available services (7.8%), and fear the cost of services would be prohibitive (2%). Interesting results have been found with regard to the attitudes towards wife-beating and sexual violence in highly patriarchal societies, where overwhelming percentage of the people find it justifiable for a husband to beat his wife if; she has been unfaithful, she disobeys her husband, the husband suspects that she has been unfaithful, there has been unsatisfactory housework. Significant numbers of women also hold the view that women cannot refuse sex with their husbands, even if he is drunk or he in some way mistreats his wife’.

“Study by Tracking Cases of GBV in Nepal: Individual, institutional, legal and policy analyses”⁹, highlights that ‘women’s experiences of the formal support systems are, at best, unpredictable and were found to be obstructive and unhelpful’. This explicitly indicates that the criminal justice system in Nepal has not been effective.

While the Preliminary Mapping of GBV in Nepal¹⁰ emphasized that ‘the interventions carried out so far have primarily focused on the victim and have not sufficiently addressed the victim’s family or the perpetrators’, since then to the current context, not much of progress through the national legal framework and enforcement mechanisms have been reformulated, designed or implemented. The same report had recommended for ‘an integrated approach combining individual counseling, community mediation, assistance for litigation and advocacy on women’s rights to address the issues related to sexual violence’, which need to be brought into limelight for continuous advocacy.

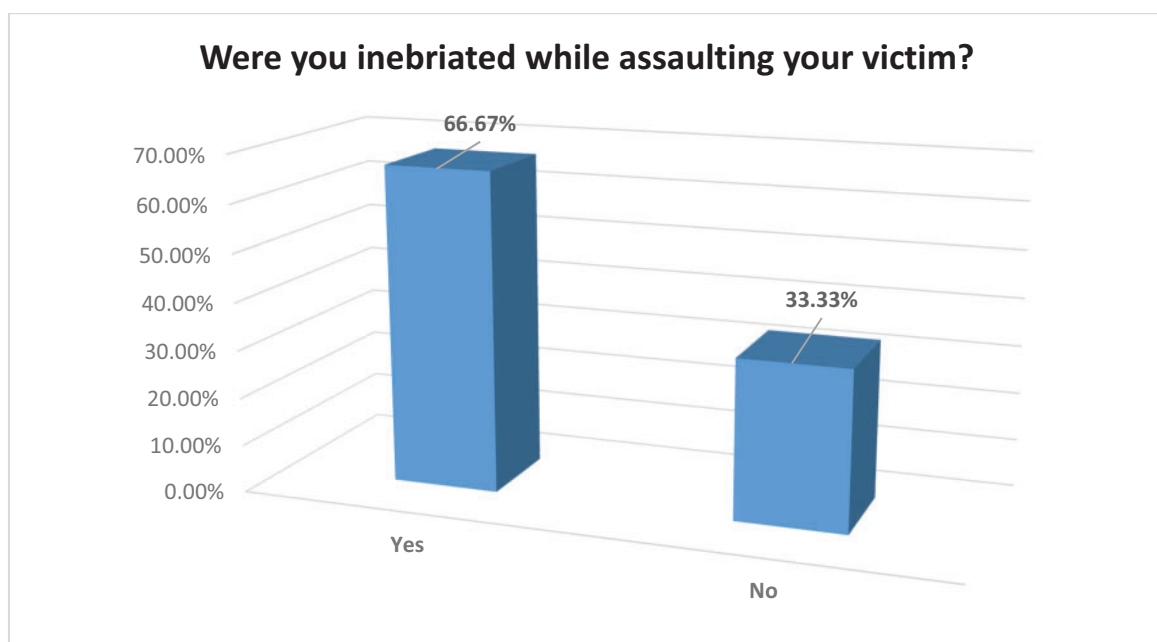
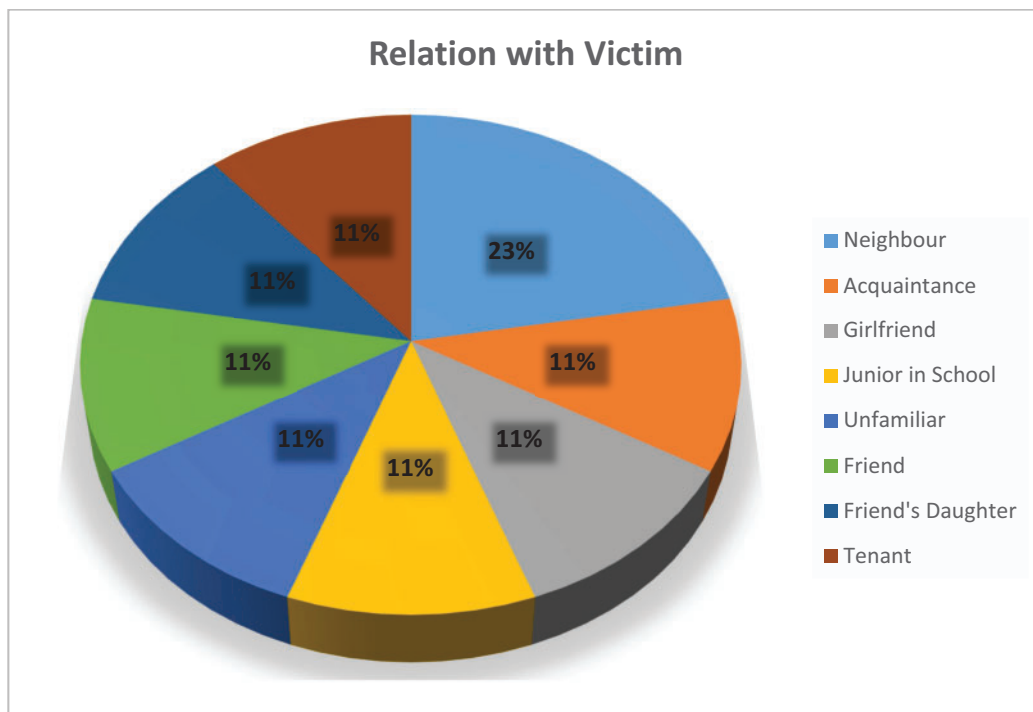
Key Findings and Analysis

In describing the characteristics and behaviours of the perpetrators of rape, the pre-scoping survey confirms many of the outcomes of previous studies which point to; (i) the high prevalence of these crimes to take place amid acquaintances rather than strangers (89%), (ii) correlation of tendencies of substance abuse, both alcohol and drugs to perpetration of acts of rape (67%), and, (iii) their lack of awareness on impacts of rigid patriarchal norms and its linkage with the normalization of rape

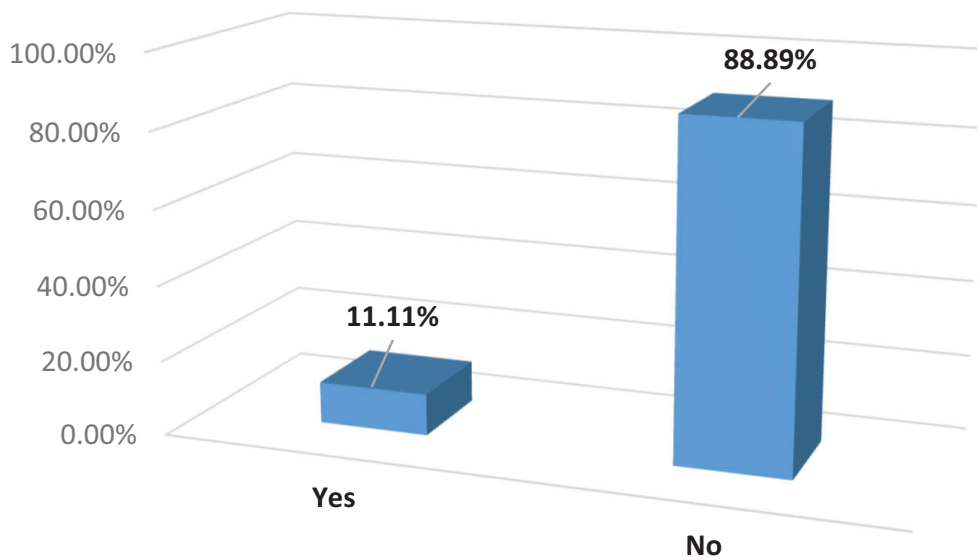
⁹ UNFPA, UN Women and UK Aid, 2013.

¹⁰ Saathi, Asia Foundation and DFID, 2010.

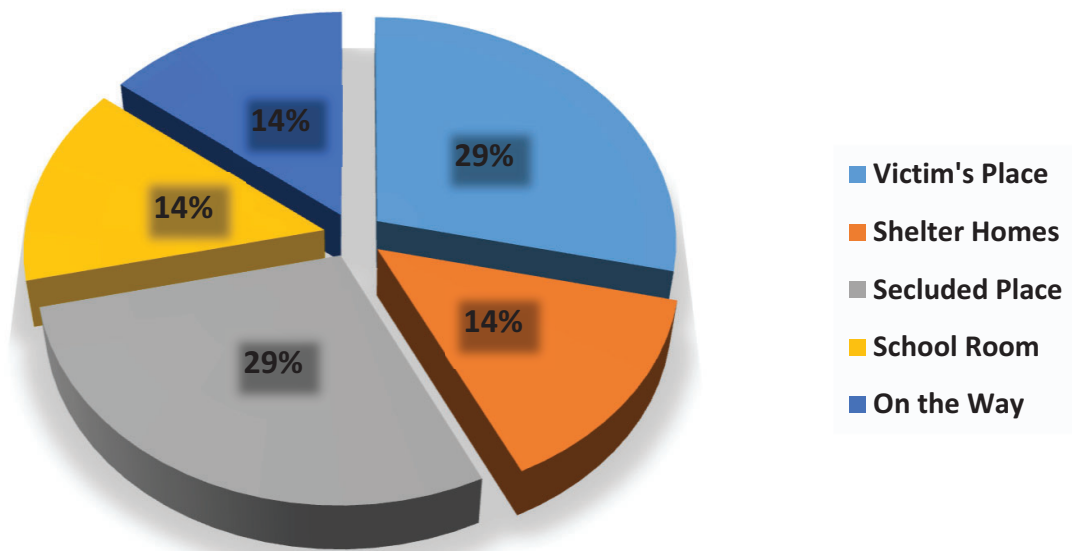
attacks (100%). The study also brings to light less discussed characteristics and behavioural traits of the perpetrators, which needs more attention, such as conviction for the crimes being increased with; (iv) persons coming from nuclear (70%) or unconventional families or being raised in single-parental or by others than parents (56%), in particular those belonging in youth groups coupled with financial hardships (56% below 20 years and 33% between 20-30 years), (v) inadequate sensitization on consequences of such acts including through lack of age-appropriate comprehensive sex education from early ages (100%), and, (vi) deep-seated attitude bearings of ignorance about rape being a criminal offence and the seriousness over consequences for the commission of such acts (67%), (vii) the shortcomings in the legal and justice system in abilities to punish the actual culprit or in cases where actual perpetrators are sentenced, psychological support measures have not been adequate to induce the feeling of repentance that is an important basis for any form of successful community reintegration (56% felt legally and disproportionately framed for punishment).



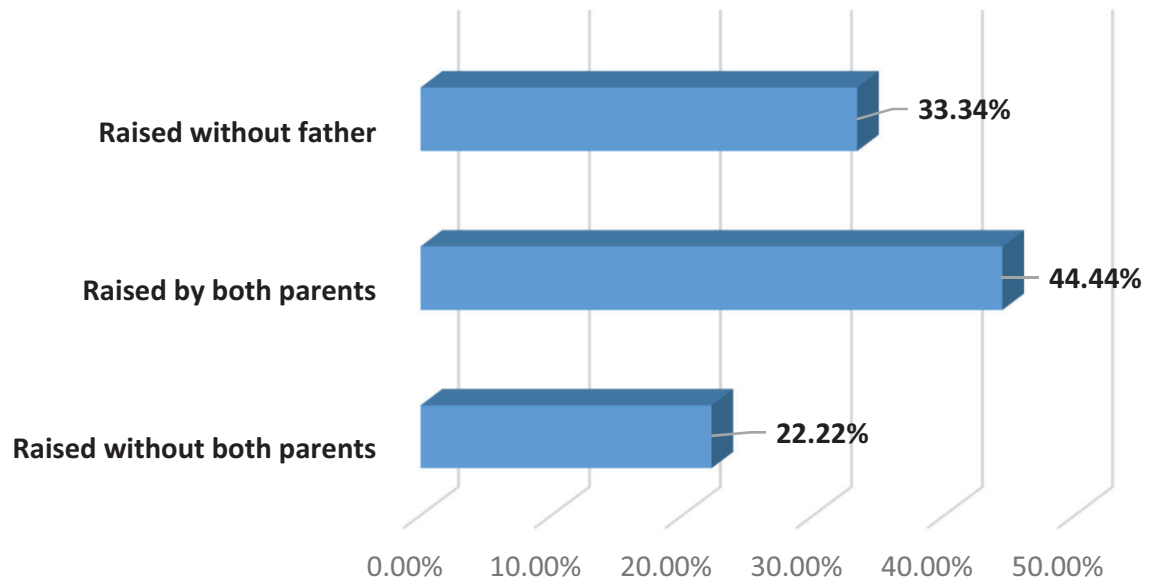
Did you take your victim hostage?



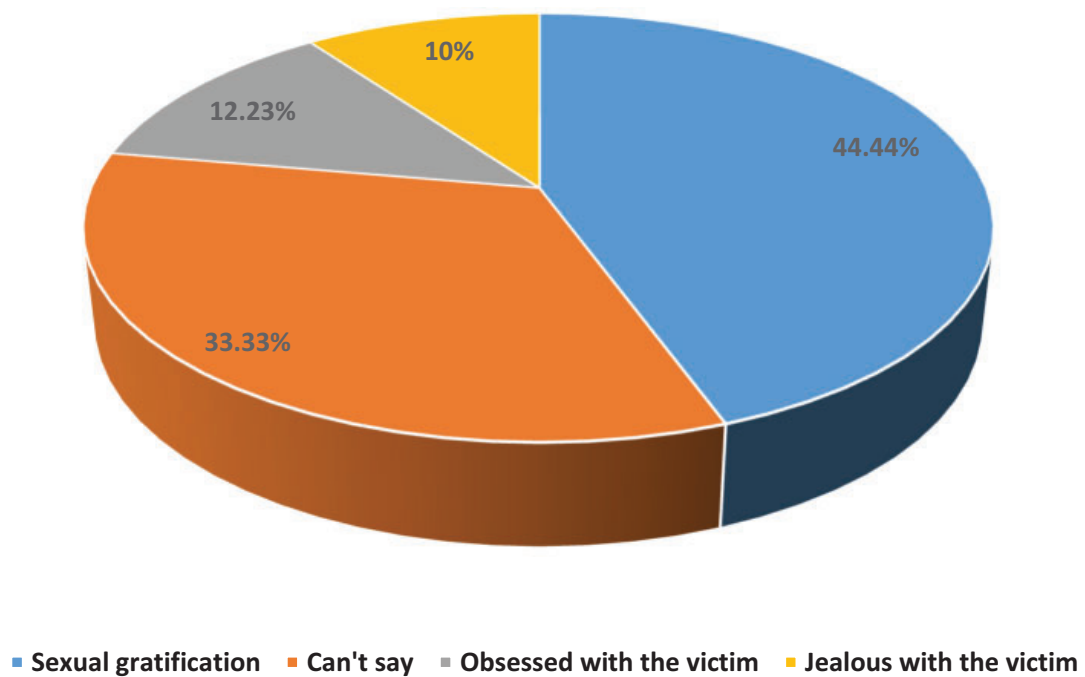
Place of Incident



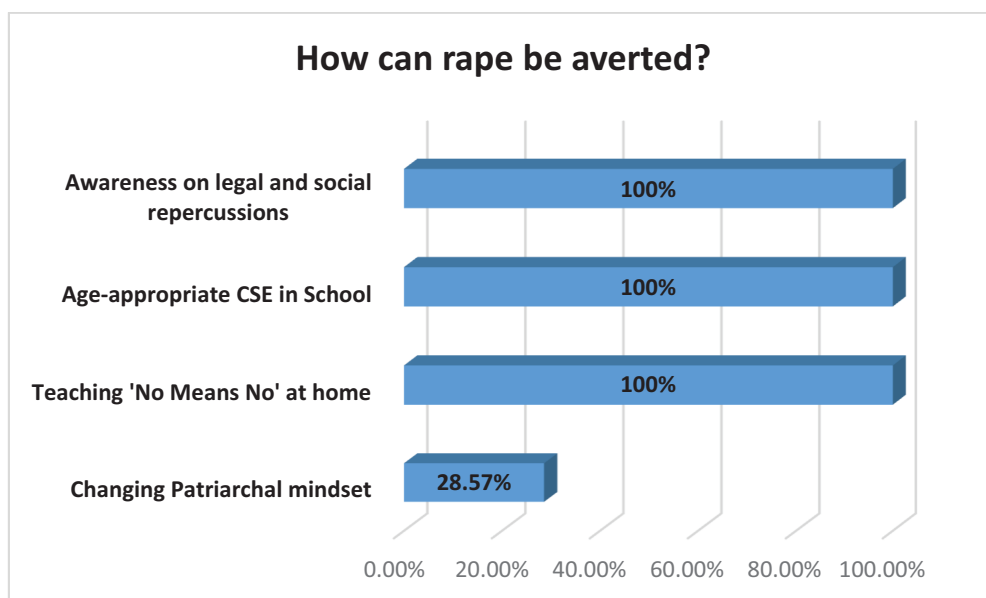
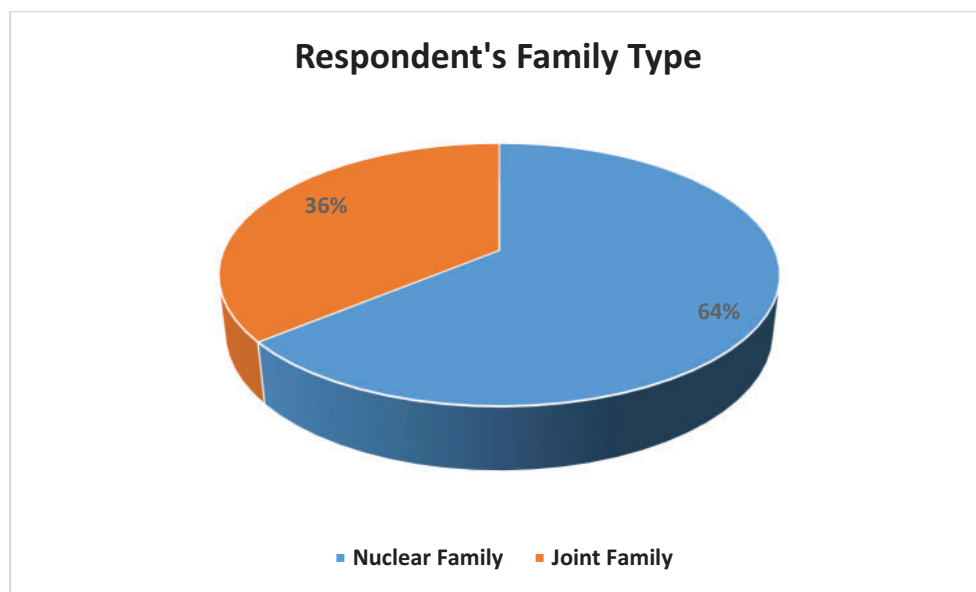
Respondent's Parents



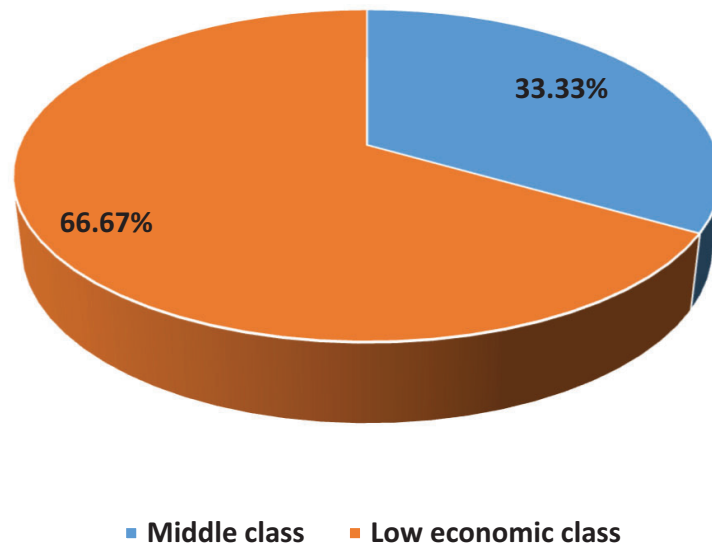
Purpose of Committing Rape



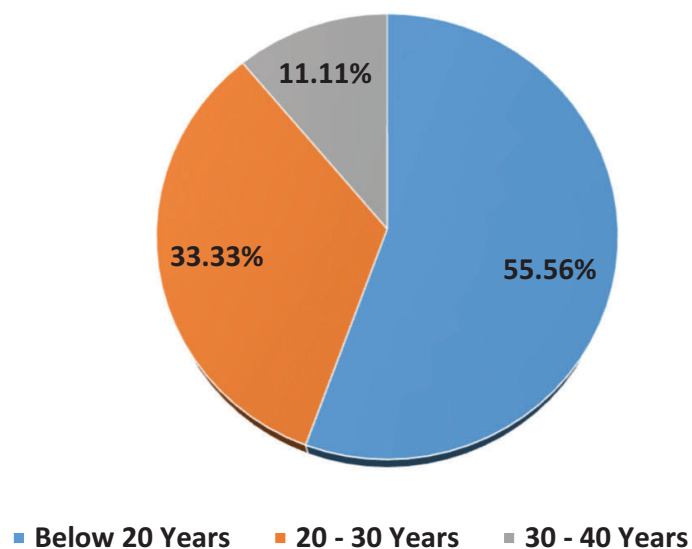
To provide other supporting numbers that align to the aforementioned findings, the study highlights that 62% of the respondents were living in nuclear families while the remaining were in joint families. 67% of the perpetrators came from lower economic class while 33% came from mid-level of economic class. Also, a closer look into the age groups of the perpetrators and professional engagement status show while 56% were in the age group below 20 years, 33% in 20-30 years, and 11% in 30-40 years, 67% were students and the rest 33% were proportionately expanded in the nature of jobs of private, government, social work sectors. 55% were unsure what led them to commit the act while 45% indicated that the purpose of attack was for sexual gratification. 56% did not know rape was a criminal offence, 22% knew it was so, and 11% were not aware in the aspect of its categorization. On the part of their emotional response behaviors in conjunction to the commission of the acts, 44% of the respondents carried the feeling of guilt and repentance after the commission of the act while 56% believed they were legally framed in a disproportionate manner in relation to the acts committed.



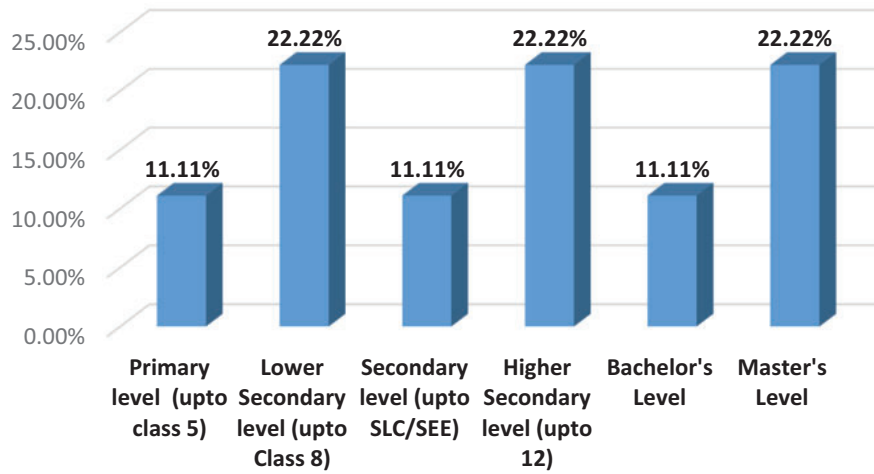
Respondent's Family's Economic Status



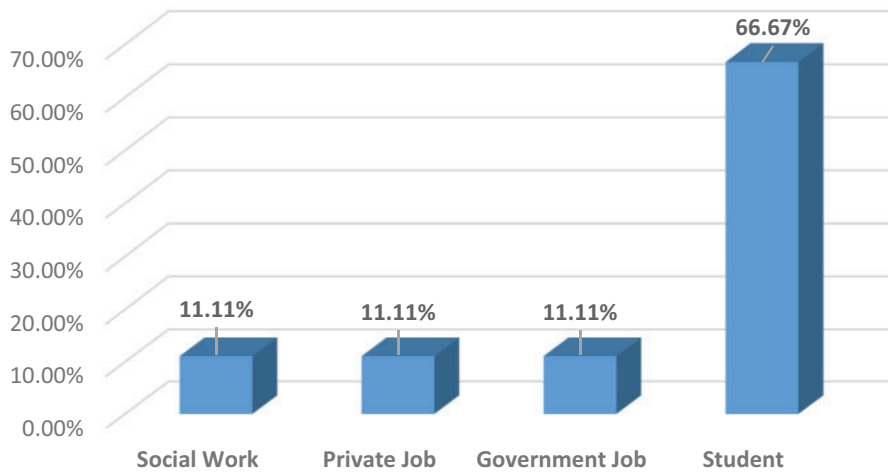
Age of respondents when they committed rape



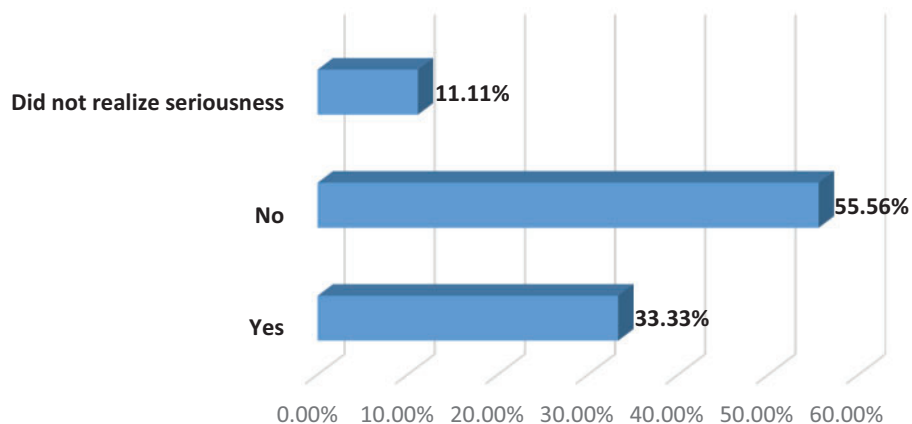
Respondent's Education



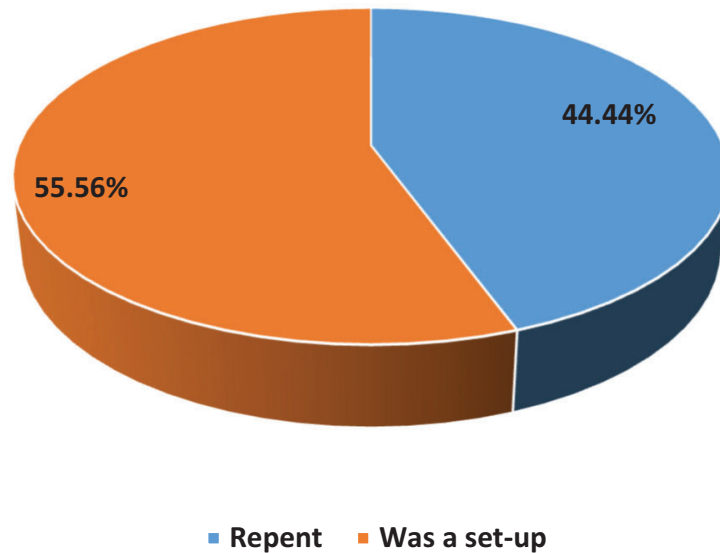
Respondent's Profession



Did you know that rape is a serious criminal offence?



Your feeling after the crime



While this finding may have resulted due to the vulnerability of poorer and/or persons to be tried and convicted by the justice system more often than the more affluent, and/or older persons who hold more power dimensions in not getting caught and/or punished, nonetheless, the study still validates that intensive efforts are needed to prevent the vicious cycle of crimes emanating from the neglect of these groups who are already marginalized from intersectional and multiple layers of human rights violations. The study raises a significant concern on the impacts on formation of characteristics and behaviors regarding perpetration of rapes in its linkages with increased nature of nuclear families amid the setting of rising urbanization. While the figure could be indicative that such crimes are under-reported in rural areas or resolved through informal means of mediation by and among the community members, it still provides evidentiary basis that different modalities are needed for legal intervention tools distinguishing the rural-urban contexts, which should be applied and used for rape prevention strategies and programmes.

The study also brings to surface the characteristic tendency of perpetrators to more often victimize younger women and girls. Close to 80% of the victims were below the age of 20, the rest were under the age of 10. On the other hand, while being questioned on the experience of childhood sexual abuse issues themselves, none reported memories of such incidences as well as none believed that the factor is linked to the behavioral tendency of rape perpetration. These set of data is indicative of the character of the rape perpetrators that on one hand, they normalize physical power exercise for sexual gratification and on the other, they also are not well informed or capable of analyzing adequately on the aspect of causation or consequences of their rape attacks.

Quick facts:

- 22% of perpetrators were raised by grandparents, 44% by parents, and 33% percent by single mothers.
- Among the married respondents, 67% have children while 33% of them were without children.
- 11% had completed primary school, 22% had completed lower primary school, 11% had completed secondary school (SLC), 22% had completed higher secondary school (+2), 11% had completed bachelor's and 22% had completed Master's.

- 75% of the incidents took place at the night time.
- 29% of the place of attack were in victim's place, 14% in shelter homes, 29% in secluded places, 14% in schools, and the rest 14% in places falling in ways of commute.
- Only 11% of the attacks by perpetrators were committed upon strangers, 89% were committed upon already acquainted relationships of being as friends, neighbours, junior in school, or related to someone one knows.
- 56% did not know about the minimum age of consent in sexual relationship. Not a single respondent made use of weapon over the course of the incident.
- In 22% of the cases, the victims were disabled.
- 67% were under the influence of alcohol or/and substance at the point of committing the acts.
- 40% had sexually abused the same victim more than once.
- 89% did not take the victim by hostage for the commission of the act.
- 22% of the cases were of gang rape.
- All respondents (100%) held the belief that teaching age-appropriate CSE, raising awareness on legal and social repercussions of such crimes and correcting as well as instilling norms such as 'no means no' can prevent crimes of rape.

The study moreover makes the following points of assessments based on the findings that adequate attention needs to turn to the premises of the behavioural issues of perpetrators, which are linked to the step of manifestation of acts of rape. Highlighted coverage of two selected cases are included.

Lack of knowledge of rape as a criminal offense: Based on the preliminary research findings, it is found that most of the perpetrators, especially who fall in the category of age of minority, they lack basic understanding that rape is a criminal offence and why it is a crime in the first place. Majority of the individuals who belong to marginalized communities were unaware that their acts are punishable by law. Access to education came up as a barrier which was detrimental for their basic level of awareness with regard to classifying their actions into wrongdoings. Their responses point consistently to the dire situation that the norms and belief systems in the local community level do not support the awareness that rape and forceful sexual advances bear wrongful scrutiny and repercussions both at legal and social levels. Moreover, the outlook of the social dynamic on male-female sexual behavior is found from this study to be rooted on the notion that males are aggressive and assertive, while females are passive, only responsive to male initiative, pressure from men and unwillingness from women is considered a normal prelude to sexual intercourse and other sexual behaviors. Rewards for men in relation to what they want are attached to their demonstration of strength, skill, and masculinity. The premise is entrenched in their mindset that consent is not permission another person gives, but a prize to be won and it involves skill of acquisition to simply acquire power expressions.

Vulnerable spaces defined by gender segregations within close proximity: Based on the description of the incidents during the interviews with the perpetrators and key informants, the study findings support the previous baseline studies on SGBV that perpetrators commit acts of rape targeting women and girls who live within their proximity. In most cases of this study, a prior contact, acquaintance or affiliation of the perpetrator with the victim have taken place in venues such as the school, neighborhood, peer network, cultural events, and children shelter homes. The relationships have been mostly defined by power imbalances where stereotypical gender roles are highly practiced, for example men with either jobs or pressures of financial incomes whereas women and girls are relegated to domestic duties. The perpetrators have prior developed the mingling and close association with the victim including with the various nature of blackmails previously imposed upon them. The study also finds that sexual molestation at early ages at the juncture of adulthood are linked to occurrences by the advances of their own relatives, neighbors, teachers or in the institutional settings where they are engaged.

Case Study of Mohan Chhetri (name changed)

At the age of 35, Mohan, who comes from a Chhetri caste group, was convicted for a period of seven years in relation to the crime of rape jointly committed with two other men. The victims were three autistic girls living in children's shelter and aged 15, 16 and 17 respectively. Particularly his crime was established while under the influence of alcohol upon a girl who was a Dalit and also his neighbor. Having worked in Saudi Arabia for 9 years, he had been running a shop selling daily goods along with engagement in social service in the community. His account of the incident was solely pinned on the denial of the crime and the narration that a false accusation was placed by the police authorities as well as the community members. The convicted mentioned of having slapped the victim on few prior occasions due to her stubborn behavior. However, he insisted that he got framed up to the point of proving the liability for the crime of rape, which in his opinion could be due to reasons of the community members potentially being jealous of his status as a popular social worker in the society. While on one hand, he could have abused his status instead with the notion that he could easily get away with the crime committed upon an autistic girl belonging to marginalized section of the society. On the other hand, even if his account was true, it is a significant finding that he was unaware of the consequences, both legally and socially in regard to the commission of the crime of rape, which reflects the extent of normalization of such events in our society. His responses concluded with the strong points on the ineffectiveness of Nepal's legal and punitive system highlighting the fact that he was offered to be set free for a bribe price of 5.5 lakhs Nepali rupees, and pointing to the plight that his denial to pay the price resulted in being framed. The overall crux of his responses, which echo the findings of most of the other convicted persons within the cases of the study, significantly emphasized that awareness, education and understanding of the nature of crimes; why it is a crime and why it should be prevented, are the deeper questions that needs attention. His response together with most of the other interviewees underlined that even in today's generation, not much of efforts have been undertaken in this regard within communities, schools and various avenues of upbringing as a child grows up.

Use of power dominance tool for varied motives: The manifesting motives of perpetrators are found to be varied. While some perpetrators reported that long held grievances of lack of acceptance by his female friend as a boyfriend became the causal factor, others outlined that the influence of drugs and alcohol and peer pressure drove them to commit rape. Some held the belief that sexual activities amongst the drug addicts are normal. Another point of highlight pointed by some perpetrators were that they have been unfairly alleged of conducting rape. Lamenting on the dire problems in the criminal justice system, they also emphasized on lack of fair trial and the applicability of commensurate level of punishments based on degree of actual engagement in the offence. One recurring theme of notion held by a sizable number of perpetrators and key informants within the research purview was that since they have never committed any form of crime previously and they were unaware that commission of rape or forcible attempts of sexual advances were punishable. These set of perpetrators were especially pinned on the idea and mental understanding that the act of sex between them was actually consensual and it was later owing to various circumstances when the victim and/or the family came up with blames of rape.

Denial of the act as a wrongdoing: The psychological impacts upon perpetrators have been manifold. Notable number of perpetrators who are convicted hold that they have not committed the offence of rape and that the legal system has unfairly treated them. Since the pre-scoping research undertaking, due to its limitations is not in a position to verify their claims, inferential interpretations still brings us to important observations. While it could be a possibility that their presentation and stance they made, as recorded during the research interview could be both true and false, however, even in the event of it being true their lack of understanding that rape is normatively a social wrongdoing and is thus a criminal offence—was severely lacking. In the case that they were on the lying side--the denial, lack of remorse, psychological restoration, and transformative behavioral approach emanates to be a major problem. Although there are some components of psychological support program for the perpetrators serving sentences pursuant to conviction by the court, most respondents have emphasized on the problem that they are unhelpful and instead are adding on to increased levels of psychological problems, which indicate that available services are not adequate or effective.

Case study Pratap Prasad (Name changed)

When aged 18 years, Pratap, who originates from Madhesi ethnicity, was convicted with the punishment for a period of ten years in relation to the crime of rape committed upon 17-year-old girl belonging to an ethnic community group. The narration of the context by the convicted described the situation of a prior five-year love affair relationship which included consensual sex between the boy and the victim. At the verge of reaching the age of majority for the victim, just falling short by four days, her family members had filed the case of rape alleging him of the crime of rape. The details provided by Pratap included the event of the two of them eloping few years ago and working odd jobs to live together, which corroborates with the facts of the case that they had been going to same school, high school together and spent great amount of time as good friends frequently visiting each other's homes as childhood friends. Pratap also mentioned that they returned from their elopement based on the promise of a marriage at a later point by their family members convincing to return to their homes. With his parents working as day workers in plastic factory, Pratap was in a tough economic situation with worries of having to meet the daily basics. At his point, he was taken by shock with sudden moves by authorities of being alleged, prosecuted and punished for having raped a minor girl, and is left wondering how he will spend a decade with parents who suffer the brunt of the losses. The case highlights important points, first that he had no knowledge that sex with a minor could be established as an offense even if it was in a relationship of consent, second that his status of being in depression in relation to the facts of the case was not medically assessed, adjudged or addressed by the authorities while undertaking legal procedures, third that corroborating evidences such as long time love affair as children leaving imprints of psychological impacts on a premature mind to be in favor of the convicted played no part in the application of judicial discretion for delivering a sentence upon him that could help rehabilitate, support and induce reforms to the convicted who is only just over few months of having attained the legal age of majority . With disregard to the economic situation of his family, not even legal support is available to the convicted for an appeal upon the case to a higher court, which poses risks of more of the negative psychological impacts upon a person whose adulthood has only just begun and pleads unawareness of the consequences of his wrong-doing in his childhood.

Long persistent gaps in criminal justice system: Based on the preliminary findings, in handling cases of rape and sexual violence, there are severe gaps in criminal justice system of Nepal. Nepal's articles on rape fail to include a comprehensive definition of consent, leaving it open to the subjective interpretation of judges – who usually ascribe to traditional views of understanding rape. It is

necessary to take into account unequivocal and voluntary agreement during sexual activity and for determining offence of rape, there should be broader recognition of coercive circumstances.¹¹ In judicial proceedings, absence of resistance to be read as consent have led to jurisprudence and precedents that negatively contributed in ascribing perpetuation of patriarchal norms. The practices of application of definitional elements of what constitutes a rape, the attribution of the offence to the relevant perpetrator and the appropriate corrective approach in justice system fall short to incorporate the intended essence of prevention, intervention and restoration. Most of the rape perpetrators spent 7-16 years of prison time as reported during the interviews. Since a sizable number of them denied that they have committed a rape, and if this is true, it points to the problem that the police investigation processes fall short in identifying the actual offender. Barriers in access to justice were consistently highlighted by both perpetrators and key informants, as issues were raised of capacities to hire competent private lawyer or be heard by a network which is in the position of a power. Even responses such as inability to influence/bribe the officials in the process were indicated which pose serious questions on the everyday *modus operandi* of the law enforcement and justice systems. There are also crucial gaps in the approach, methodology and procedural aspects of police investigation on how cases against rape are documented and handled. Other such challenges during the judicial process include lack of; adequacy in applying alleged person and victim's backgrounds, context, motivations, their psychological, social and financial standings, medical and other reports from experts, collection of witnesses and testimonies, cross-checking and verification, coordination with relevant agencies, coherence in discretion used by judges while sentencing, opportunities for restoration, transformative psychological and behavioral counseling, monitored engagements in community work and integration.

Conclusion and Recommendations

It surfaces from the pre-scoping study that the cycle of behavioral and characteristics demonstration of the perpetrators who commit rape or made attempts to do so, have a familiar pattern. From the standpoint of the perpetrators, they mostly commit from deeply held underlying faulty normative notions of masculinity and aggression and later encounter fear and anxieties pursuant to the application of criminal justice system. A preventive community awareness and norm correction educational approach are lacking at the systemic levels. As these perpetrators then do not have adequate access and support to allow their restoration and reforms, these psychological impacts remain unaddressed. On the other hand, their families living in the communities face undue ostracization of being tagged as a rapist family in the society thereby factors of divisions within the community stems which builds on for the probable creation of hostility driven and biased individuals. With the persistent levels ignorance on norms and polarized approach of the current systemic processes, neither prevention of occurrence of rapes nor a transformative behavioral outcomes of perpetrators can be expected.

Based on the preliminary findings from interview with perpetrators and key informants, some prevention strategies can be suggested to reduce and eliminate rape in the society. First, it would be important that the any form of intervention should emphasize on the importance of educating about rape as a criminal offense at the school level curriculum, family and at the community level. Additionally, knowledge of legal punishment, social and financial costs as well as implications of committing acts of rape and sexual violence should be sensitized at community levels. Allocating resources in right intervention areas needs to be priority. The misogynist norms in the community should be monitored and corrected. Establishing early warning systems and mechanisms of individuals who commit behaviors that are to be flagged and warned within the community such as through educational institutions, health centres and other community service centers can be another useful tool in relation to developing prevention tools.

Second, at a time of full-fledged federalization of national machineries in Nepal, local governments should be allocated with sufficient budget to carry out awareness raising programs at various

¹¹ Recommendation also by 2017 report by the International Commission of Jurists.

entry points at community level, such as schools, health centers, media, transportation services, counseling, legal services, and employment services. There should be provisions for functioning of crisis-oriented services, shelters, rape crisis centers, and advocacy measures should be well instituted within the range of bodies. Establishment of specialized sex crime units with specialized training to individual investigators can be useful. These specialized units can help ensure that appropriate forensic evidence is collected. Prosecutors' offices also should have specialized units that handle sex crimes.

Third, the government is currently based on Muluki Ain and relevant Penal laws which is supplemented by Ordinance Amending Law on Rape (2020) and it is working on "Draft Act on Rape", which should be well-consulted with the relevant stakeholders for full implementation and its institutional ownership should be given prime importance. It is important to build good practices and methods to develop effective intervention tools based on the future Act that can be effective in outcomes of prevention and restoration of rape perpetrators. Globally, a major shift in rape law reform has been to move from focus on the interpretation of consent of the victim to focus on the behavior of the offender.

Fourth, reforms in police investigation processes need to be undertaken. Proper, adequate and accurate documentation with individual history files should be recorded from the point of registering the complaint to executing sentences. It can be important step to develop the practice of documenting in detail the behaviors and characteristics of perpetrators in question in order to develop intervention tools for their restoration. With review of such documentation at timely intervals, such information can be fed for prevention pillars through various mechanisms at community levels.

Fifth, many practitioners recognize the need for interactions and coordination among various systems that might intervene with victims and offenders. Coordinated community approaches can be developed, including community intervention projects, community partnering and technical assistance projects. These projects can involve a grassroots organization that sets up procedures with the local criminal justice agencies to establish and monitor policies related to rape, help both the perpetrators and victims navigate the legal system and locate services for their children, and to provide information on the treatment options to the perpetrators.

Sixth, there is a general tendency of denial amongst the rape perpetrators as per the finding of the pre-scoping study; therefore, it is important that proper psychological assessments are conducted in prisons to identify their sense of guilt to prevent repetition of such acts. Group programs for counseling sessions including with families can be beneficial for expansion as a family therapy model of counseling which has been growing in many countries. Treatments can include insight-oriented, cognitive-behavioral, behavioral modification, and pharmacological therapies. Efforts might also be useful to identify those who are at highest risk for reoffending with a system of indicators that can be applied in the process of the assessments of perpetrators.

Lastly, on the part of the justice system, imposition of sentences with adequate behaviour correcting tools should be applied with nuanced analysis during adoption of the verdicts keeping in view of the gravities upon the perpetrators associated with age, mindset, family backgrounds, intentions, inciting factors for the commission of crimes, especially while determining long sentences. Prediction of future sexual dangerousness can be developed with variables such as prior convictions, deviant sexual interests, and psychopathy have been shown to be associated with increased risks.

Specific Recommendations

Government

- Review, adopt and promulgate the Draft Rape Act and implement mechanisms to develop and institutionalize good practices in identifying perpetrators in particular with emphasis to reforms, restoration, medical treatment in relation to psychological aspects, rehabilitation and integration of perpetrators.
- Design community based psycho-social intervention programs that changes men's

perceptions of rape so they begin to view it as less rewarding than consensual sex, in both the short term and the long term; more costly than consensual sex (e.g., imprisonment, guilt, loss of job); and more likely to lead to negative consequences (e.g., high probability of getting caught or feeling guilt) might be beneficial in preventing attempted rapes.

- Introduce application of early warning systems at local levels, create system of referrals within communities among various institutions working with local communities in regard to potential perpetrators and convicts who need to integrate in society with appropriate restoration measures.
- Establish functional specialized units within community health centres and hospitals to regularly gather data and information not limiting to the victim's details but including with the detailed account of what can be known of the perpetrators. This file should be passed on to the investigation procedures and judicial system.
- Develop a comprehensive strategy on countering rape and sexual violence, with timeline and measurable targets requiring authorities at the federal, provincial and local levels to implement relevant laws to prevent and eliminate rape culture.
- Coordinate prevention efforts in collaboration with civil society, local government and judicial committees to raise awareness holistically among police, the judiciary, village-based health networks and networks of religious and community leaders.
- Provide local government with sufficient budget on the sensitization program on norms associated with rape culture, measures to correct such faulty notions including with awareness of legal punishment and socio-economic implications.
- Supply resources and protective measures to increase confidence in women and girls to the use of self-defense strategies and willingness to confront and tackle with perpetrators with awareness of their mindset.
- Ensure the understanding of faulty social norms related to masculinity and forceful behaviors are introduced into the school curriculum, targeting both girls and boys, and disseminated at the local and village levels, including with the support of local religious leaders.
- Policy evaluations of preventive and treatment intervention efforts for perpetrators must clearly define the outcomes expected from the intervention. Programs designed to prevent rape and sexual violence should be subject to rigorous evaluation of both short- and long-term effects.
- Studies should be conducted that examine discretionary processes in the criminal and civil justice systems, including implementation of new laws and reforms, adjudication process, and judicial decision making. Legal research, which supplies the theoretical basis behind legal interpretations and reforms, is also needed extensively for crimes related to rape and sexual violence.
- Integrate programmes of awareness raising and other correctional measures of sexual violence delinquents with local financial support, relief and empowerment packages in view of economically marginalized persons.
- Effectiveness of programs related to legal or social service interventions with various groups of perpetrators should be evaluated in timely intervals that feeds information into future policy making.

Schools and Community

- Design and implement various rape-awareness and perpetrator interventions program including with introductions to the definitions of rape and legal terms, presentation of statistics regarding the prevalence of rape, discussion of the ways that society condones or perpetuates rape, descriptions of typical perpetrators and information on local resources for victims of rape.
- Perpetrator programmes should be developed on a full understanding of gender theory, and of gender hierarchy and masculinities, including social, cultural and religious, ethnic

and political influences. It should have a complete definition of domestic violence and types of abuse, an understanding of the causes and mechanisms which lead to violence and a theory of intervention and change.

- Review the school level curriculum and incorporate age-appropriate CSE, definition of rape, vulnerable spaces, nature of criminality and punishment under legal framework and infuse forms of violence against women as well as characteristics and behaviors of perpetrators into curricula at all levels.
- Increase sensitization in perceptions of victims' vulnerability to rape in unsafe space (e.g., use of alcohol, hitchhiking, attending parties, dating in isolated locations) and increase their intentions to avoid risk-taking behaviors.
- Engage with men and boys as allies, capitalizing on the available networks working for VAW, in prevention efforts by aligning them with the majority who do not support rape and sexually abusive behaviors.
- Provide universal rape-prevention education and parent education knowledge, attitudes, through schools and workplaces beliefs, behaviors.
- Insert standard character development trainings in various avenues which incorporate social skill trainings for high school students, youth groups, marginalized sections of population, aspiring professionals, juvenile delinquencies, trainees, interns and jobless youths, which incorporates normative frameworks surrounding rape and sexual violence.

Police institutions

- Review the existing police investigation processes including by establishment of specialized unit for sex crimes, instituting good practices in documentation, reporting and case submission in the courts related to rape.
- Support in developing risk-assessment tools for use within the criminal-justice system to predict the likelihood of re-offense among convicted sexual assault perpetrators.
- Provide capacity building training to police officers on risk-assessment tools for identification rape perpetrators mapping the degree of severity.
- Promote police services delivery model towards intervention and prevention of rape and sexual violence.

Legislation and Enforcement by the Judicial System

- Conduct legal review of the existing trial processes and procedural justice related to rape. Directions of reforms in this area should focus on the practice of looking at force, threat of force made or infliction of power abuse, by the offender rather than in seeking the consent of the victim.
- Ensure that rape laws encompass all unsafe spaces within its jurisdiction which can pin down every degree of perpetration of the acts by defining proportionality and gravity of the offence.
- Provide capacity building trainings to parliamentarian, lawyers, and judicial members on addressing the challenges related to rape in the society.
- Ensure the availability and accessibility of legal counselling and legal aid to perpetrators.
- Reform the judicial system in its capacities to accurately identify and punish the perpetrators.
- Implement effectively 'Basic principles on the use of restorative justice programmes in criminal matters'¹² and introduce restorative justice programmes as well as measures for referral of relevant cases under such programmes. Provide adequate qualifications, training and assessment of facilitators, and monitor the result based outcomes of the programme.
- Enhance coordination systems among relevant judicial agencies and community level

¹² ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

government office with follow-up tools for tracking the perpetrators with the progresses in their re-integration.

- Determine sentences with adequate behaviour-correcting tools in view of alleged person's backgrounds, context, motivations, psychological, social and financial standings, medical and other reports from experts, collection of witnesses, cross-checking and verification.
- Ensure coherence in the application of discretion used by judges while sentencing, and supplementing the sentence with opportunities for restoration, transformative psychological and behavioral counseling, monitored engagements in community work and integration.

Prison/Correctional Centre

- Conduct a review of prison system and other correction center to address the denial defense mechanism of perpetrators.
- Develop practices to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which provide guidance on good principles and practice in the treatment of prisoners and prison management make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.
- Institute systemic health-care service provisions for the perpetrators along with evaluation, promotion, protection and improvement of the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
- The health-care service should comprise sufficient qualified personnel acting in full clinical independence and should encompass sufficient expertise in psychology and psychiatry. Signs of psychological or other stress brought on by the fact of imprisonment should be assessed, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol, and appropriate individualized measures or treatment should be made available.
- Design personality and self-report tests that have traditionally been used in clinical settings to assess mental illness and sets of personality characteristics to assess and treat known sex-offender.
- Review the existing psychosocial support program in the prison and ensure better counselling and other related support to the prisoners.

Annex 1

List of Key Informants

1. Honorable Judge Shree Krishna Bhattarai- Kaski District Court
2. Honorable Krishna Kumari Khatiwada – Member, National Women’s Commission
3. Ms. Lila Gadtaula – Secretary, National Law Commission
4. Ms. Roshani Shrestha - Joint Secretary, Ministry for Women, Children & Senior Citizens
5. Senior Superintendent of Police (SSP) Kiran Bajracharya – Nepal Police
6. Senior Advocate Meera Dhungana - Forum for Women, Law & Development (FWLD)
7. Social Activist Menuka Thapa – President of Rakhsa Nepal
8. Anita Thapaliya – President of Legal Aid and Consultancy Center (LAAC)
9. Sapana Maharjan Shrestha – Coordinator of Women’s Shelter, Saathi

Annex 2

Questionnaire respondents of rape perpetrators

Questionnaire: This questionnaire was the basis for the dialogue and interview conducted with the convicted

A. Quantitative Section

Personal Information

1. What is your Gender Identity?
 - a. Male
 - b. Female
 - c. Third Gender
2. Caste of the respondent
 - a. Brahmin/Chettri
 - b. Dalit
 - c. Janjati
 - d. Madhesi
3. Marital status of the respondent
 - a. Married
 - b. Unmarried
 - c. In-relationship
 - d. Divorced
4. If married, do you have children?
 - a. Yes
 - b. No
5. Family types of respondent
 - a. Joint family
 - b. Nuclear family
6. About parent?
 - a. Raised without both parent?
 - b. Brought up by a single mother?
 - c. Raised by Single father?
 - d. Raised by both parent?
7. Education level of your parent
 - a. Parent and mother both literate
 - b. Parent and mother illiterate
 - c. Father literate, mother illiterate
 - d. Mother literate, father illiterate

8. Do you have following members in your family? (tick more than one as applicable)
- a. Senior sister/s
 - b. Junior sister/s
 - c. Senior brother/s
 - d. Junior brother/s
9. What is your education level?
- a. Primary level
 - b. Secondary level
 - c. Higher secondary level
 - d. University Degree
 - e. Illiterate
10. Family's Economic status respondent
- a. Well off
 - b. Middle class
 - c. Low Income
11. What is/was your profession?
- a.
 - b.
 - c.
 - d.

B. About the incident

1. What was your age when you committed the crime?
- a. Under 20
 - b. 20 to 30
 - c. 30 to 40
 - d. 40 above
2. At what time did the incident take place?
- a. Morning time
 - b. Day time
 - c. Evening Time
 - d. Night time
3. Age of the victim/s?
- a. Under 20
 - b. 20 to 30
 - c. 30 to 40
 - d. 40 above

4. Where did the incident take place?
 - a. Jungle/Secluded place
 - b. Victim's home
 - c. Perpetrators home
 - d. In the field
 - e. In a hotel /rented room
 - f. Shelter home
 - g. Others
5. Relation with the victim?
 - a. Neighbor?
 - b. Acquaintance
 - c. Relative/Family member
 - d. Student
 - e. Daughter
 - f. Other
6. Did you use any weapon to control the victim?
 - a. Yes
 - b. No
7. What was victim doing at the time of the incident
 - a. She was at home
 - b. She was on her way to school
 - c. She was in the jungle to collect fodder or in a secluded place
 - d. Other.....
8. Did your victim have any kind of disability?
 - a. Yes
 - b. No
9. If yes, what kinds of disability did she have?
 - a. Mentally challenged
 - b. Visually Challenged
 - c. Physically challenged
 - d. Others.....
10. About the rape
 - a. Consensual but both are underage
 - b. Non-consensual and both are underaged
 - c. Consensual act with underaged victim
 - d. Non-consensual act with adult victim

C. Characteritstics and Behavior

1. Did you go through any violence in childhood?
 - a. Yes
 - b. No
2. Had you taken alcohol or abused substances while committing the rape?
 - a. Yes
 - b. No
3. Were you jealous or obsessed with the victim?
 - a. Yes
 - b. No
 - c. Can't say
4. Did you take the victim hostage before abusing her sexually?
 - a. Yes
 - b. No
5. Did you abuse your victim more than once?
 - a. Yes
 - b. No

Why do you think you committed the rape?

- a. For sexual gratification
 - b. Family revenge
 - c. I was jealous of the victim
 - d. I was obsessed with the victim
 - e. Any other
6. Did you share about the incident with anyone? If yes, with whom?
 - a. Friends
 - b. Parents
 - c. Siblings
 - d. Others
7. Were there other friends with you when you committed and did you rape together?
 - a. Yes
 - b. No
8. How did the idea of rape come to your mind?
 - a. Porn
 - b. Friends
 - c. Films
 - d. Can't say
 - e. Others.....

9. Please tick if following are true to your behavior
 - a. groping
 - b. ogling at women/girls
 - c. teasing/ pass lewd comments on women and girls
 - d.
 - e.
10. Have you realized your mistake?
 - a. Yes, I repent it
 - b. No, it was a ploy against me
 - c. I don't want to talk about it
 - d.

D. Perpetrators' Justifications for their Actions

1. Did you know the age of consent in Nepal?
 - a. Yes
 - b. No
2. Did you know that rape is a criminal offence?
 - a. Yes
 - b. No
3. What incited you to commit rape?
 - a. Listening from friends on sexual pleasure
 - b. I believed that girls are weak and cannot say no
 - c. I had heard from seniors that girl's "no" is actually yes
 - d. Any other
4. Why did you take rape so lightly?
 - a. I was not given sex education at home and school
 - b. I was carried away and influenced by the talks of friends
 - c. Watching porn
 - d.
 - e.
5. What was your feeling after committing the rape? (tick more than one if applicable)
 - a. Sense of repentance
 - b. Sense of fear
 - c. Sense of satisfaction
 - d.(other)
 - e.(other)

6. What were your thoughts after you were convicted?
 - a.
 - b.
 - c.
7. What do you think could have averted this incident?
 - a. If I was given proper sex education and awareness in family and school
 - b. If the victim had cried for help
 - c. If I was not under the influence of alcohol/ drugs
 - d.
8. Do you think you would commit such an act again?
 - a. Yes
 - b. No
 - c. Can't say
9. The impact of your act on your family members or in social status/ prestige
 - a.
 - b.
 - c.
 - d.
10. Can you face your victim if you are released from Jail?
 - a. Yes, I will face and ask for forgiveness
 - b. No, I can't face her
 - c.
 - d.
11. Why do you think one commits rape?
 - a. Lack of awareness on the punishment related to rape
 - b. Patriarchal thoughts of women and girls being weak and submissive
 - c. Family lacking in providing sexual education to their children, specially sons
 - d. Habit of watching porn
 - e. Any other



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