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Nepal: Overly restrictive statute of limitations on rape and other sexual violence must be removed

Nepal must urgently remove the restrictive statute of limitations on cases of rape and other sexual violence through amendment as it continues to be a barrier for survivors in access to justice, said Amnesty International today while expressing solidarity with the ongoing protests that are demanding swift justice for victims of sexual violence and reform of rape laws in Nepal.

Activists in Nepal have taken to the streets after a survivor on 18 May through social media made public the allegations of rape that was committed eight years ago, when she was 16 years old. Under the 2017 penal code of Nepal, complaints of rape must be filed within one year from the date of the commission of crime. This is grossly restrictive as it prevents many victims from accessing legal remedy effectively, in particular, victims of child rape. As a result of the pressure from the protests and in light of one-year limitation, the police arrested the alleged perpetrator on 21 May under Human Trafficking and Transportation (Control) Act, 2007.

“Time and again we have seen courageous survivors are denied justice because of the outdated and harmful one-year limit for filing rape complaints. The current provision is grossly restrictive, unfair and unmindful of the state the survivor might be in. In its current form, such provisions allow many perpetrators of rape to get away with their crimes,” said Yamini Mishra, South Asia Regional Director at Amnesty International.

The grossly restrictive and inadequate length of limitation fails to take into account the stigma that women and girls face when reporting cases of sexual and gender-based violence and prevents them from accessing legal remedy, therefore, fosters impunity for such crimes.

“The provision in its current form should be repealed immediately to guarantee sufficient time to ensure effective access to remedy that is in line with international obligations. The Nepal government should consider amending the provision to allow the statute of limitation for a period of time that is sufficient and commensurate with the gravity of the offence in question. This needs to be done in consultation with civil society and survivors so as to take into account the stigma that women and girls face when reporting cases of sexual and gender-based violence,” said Yamini Mishra.

The statute of limitation in Nepal is further reduced to three months when the offence is committed against a person held in detention, taken into control, kidnapped, or taken hostage. The law stipulates that no complaint shall lie after the expiry of three months from the date of release from such detention, control, kidnapping, or hostage taking.

In 2008, the Supreme Court of Nepal issued a directive asking the government to amend laws to adequately expand the then 35 days statute of limitation taking into consideration victim's psychological status, time required for investigation, and the existing barriers to justice. The provision of a one-year statute of limitation in the new 2017 penal code remains insufficient and continues to deny legal remedy for victims who filed complaints after one year. In 2008, The United Nations Office of the High Commissioner on Human Rights (OHCHR) representative noted that 'the statutory limit is often used as an excuse by police for not filing a complaint in cases of rape'.

Several other provisions in the law relating to rape and other sexual violence also do not meet international human rights standards. The narrow definition of rape in the penal code only recognizes rape committed by man against a woman or girl, but not against people of other genders. This prevents men and boys, and victims of diverse gender identities from accessing justice. During Nepal's third cycle of Universal Periodic Review in January 2021, at least four member states recommended Nepal to remove the statute of limitations on rape and other sexual violence which Nepal did not accept. Nepal has, however, accepted recommendations from dozen member states on addressing sexual and gender-based violence, including bringing rape laws in line with international standards.

"The government must take swift measures to review the legislation to bring it in line with international standards, including ensuring gender neutral references in the law for perpetrators and victims. Authorities must also ensure prompt investigations and prosecution of allegations of rape and other sexual violence and sufficient access to justice and reparations for the survivors while ensuring their protection during the investigation and trial. The authorities in Nepal must not ignore the demands of women's rights activists for this important change to strengthen survivors' rights in the country," said Yamini Mishra.