

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session
HOUSE BILL NO. 4148



Introduced by REP. TEDDY BRAWNER BAGUILAT

EXPLANATORY NOTE

Rape is a heinous crime that results in physical, social, emotional and psychological harm. The number of reported rape cases (from 2011 to 2015) to the Philippine National Police (PNP) showed an increase from 832 cases in 2011 to 2,010 cases in 2014, although it slightly decreased to 1,986 in 2015. Rape cases ranked second among the most number of violence against women cases. The same increasing trend has been shown for cases of attempted rape with 201 reports in 2011 to 677 reports in 2015. Cases of incestuous rape average to 30 reports per year for the past five years.¹ With the alarming increase in the incidence of rape including gang rape and rape among peers, and the lack of effective prosecution of perpetrators of rape leading to the dismissal of some rape cases and impunity of rapists, there is an imperative need to revise our law on rape towards the effective prosecution and investigation of rape complaints, addressing the various needs of rape survivors and most importantly, in preventing the commission of the said crime.

The Anti-Rape Law of 1997 (RA 8353)² brought positive changes to the old Revised Penal Code provision on rape by reclassifying it from a "crime against chastity" to a "crime against person," and by including non-penile penetration as "rape by sexual assault". However, certain issues still remain in the said Anti-Rape Law regarding consent, the existence of the forgiveness clause, the age of statutory rape, evidentiary requirements, penalties and rules governing the prosecution of rape, among others.

Firstly, our present law implicitly sets the rightful age of consent to sex at 12 years old. The Philippines' age of consent is actually the world's lowest. The average age of consent world-wide is set at 16 years old. By maintaining the very low age of sexual consent in our law, we are leaving our children as young as 12 years old more vulnerable to sexual assault.

Secondly, while RA 8353 did away with the jurisprudential requirement of exerting tenacious resistance in order to claim that consent was not given by the victim, some courts still have differing interpretations and perspectives in presuming consent because the law does not have a clear articulation of what the concept of consent really pertains to. It is often difficult for a woman to press charges because of the evidentiary rules concerning the crime, or many cases of rape are being dismissed in courts because victims have to prove beyond reasonable

¹ PNP 2015 Data.

² An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [The Anti-Rape Law of 1997], Republic Act No. 8353 (1997).

doubt that there was no consent.³ The current Anti-Rape law therefore needs to be amended to reflect the idea that consent must not be presumed even in the absence of overt physical effort to resist the act of rape or the failure of the victim to expressly and vehemently say “no” to the act, among other circumstances.

Capacity to consent should also take into account the mental condition of the victim. While indeed, people who are demented, deprived of reason or are unconscious are definitely incapable of giving valid consent to any sexual act, caution must be placed so as not to restrain or limit the freedom of persons with mental disabilities to make decisions for themselves when they can, i.e., during their lucid intervals, if applicable, including their freedom to engage in voluntary sexual activities.

Thirdly, RA 8353 imposes a lighter penalty for “rape by sexual assault” committed with the insertion of an object or instrument into the vaginal orifice, as opposed to rape by penile penetration.⁴ Implicit in this provision is a disregard for the traumatic effects of an assault of this nature.⁵

Fourthly, the current Anti-Rape Law still contains a forgiveness clause that easily exonerates the offender and poses further danger to the victim. A provision in the law which states that the “*subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed*” gives an easy way-out for the offender. Once the female victim marries the offender, she no longer has legal remedy to file an action for the rape that happened before the marriage. It also recognizes that “*if the offender is the legal husband...the subsequent forgiveness by the wife who is the offended party... shall extinguish the criminal action or the penalty.*” This perpetuates gender-based violence under the shroud of marriage, keeping women in violent and abusive relationships rather than freeing them. Moreover, this provision on forgiveness does not recognize the basic right of the woman to say no to unwanted sexual assault, and it provides impunity to abusive husbands since forgiveness can easily be obtained from their wives through threats, blackmail or manipulation.

Our law should also provide a right to appeal for victims of rape in cases of acquittals that are anchored on gender myths, gender biases, and other analogous gender-discriminatory grounds. Restricting appeals in rape cases denies justice to rape victims who face prevailing sexism in our judicial system. Providing justice to rape victims is of transcendental importance that should go beyond strict implementation of rules. We need to provide explicit recourse for victims of rape to file appeals in rape cases that were dismissed based on blatantly unmeritorious grounds. The rule on double jeopardy has already been relaxed under the DOJ Memorandum Circular No. 3 issued on April 1, 1997 allowing appeals in acquittals by the trial court in cases where there is deprivation of due process or grave abuse of discretion. The Supreme Court has also allowed appeals in acquittals based on deprivation of due process or grave abuse of discretion under exceptional circumstances.⁶

Lastly, it is important to include provisions on support services and programs for survivors of rape to address their sexual and reproductive health concerns [e.g. sexually transmitted infections (STIs), reproductive tract infections (RTIs), unwanted pregnancies,

³As mentioned in the presentation of Ms. Amelia G. Suarez, RSW, MSW of the Women’s Crisis Center (WCC) on September 27, 2013 during the Roundtable Discussion: Addressing Gender-based Violence Through a Gender-Responsive Judicial System: Call to Action.

⁴ Clara Rita A. Padilla, A Call for Philippine Implementation of Women’s Rights under CEDAW” (52 ATENEO LAW JOURNAL 765-803 (2008); Clara Rita Padilla, Philippine Submission to Equality Now Workshop on Litigating for Sex Equality (June 9-11, 2001) (transcript available on file with the Center for Reproductive Rights) at 17 [hereinafter Padilla, Litigating for Sex Equality]. This workshop was held in Nairobi, Kenya.

⁵ Women’s Legal Bureau, Women’s Health and the Law, 69-71 (1997).

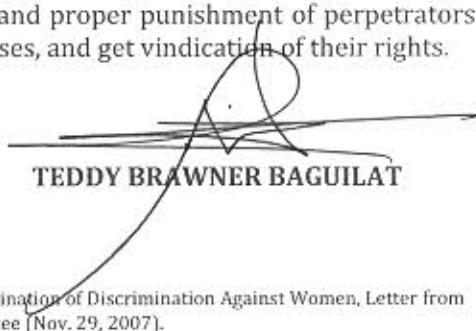
⁶ People of the Philippines vs. Danilo F. Serrano, Sr., G.R. No. 135451, September 30, 1999; People vs. Gomez, 126 Phil. 640 [1967]; People vs. Bocar, 138 SCRA 166 [1985]; People vs. Navarro, 63 SCRA 264 [1975]; People vs. Court of Appeals, 101 SCRA 450 [1980]; Aquino vs. Sison, 179 SCRA 648 [1989]; Gorion vs. RTC Cebu, 213 SCRA 138 [1992]; Galman vs. Sandiganbayan, 144 SCRA 43 [1986].

HIV/AIDS transmission, physical injuries including death, among others], and to help them overcome the trauma brought about by the heinous experience.

The proposed bill aims to introduce all the necessary amendments addressing the issues explained above to make the Philippines' Anti-Rape Law more gender-responsive and more effective. But aside from that, the proposed bill also generally adopts the recommendations given by the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (U.N. CEDAW) in the case of Karen Tayag Vertido vs. Philippines (Communication No. 18/2008)⁷, to wit:

- (a) Provide appropriate compensation commensurate with the gravity of the violations of her rights
- (b) Take effective measures to ensure that rape proceedings are fast tracked
- (c) Ensure impartiality and fairness in legal procedures for rape cases which should not be affected by prejudices and stereotypes. Develop wide range of measures targeted at the legal system to improve the judicial handling of rape cases, including conduct of training and education to change discriminatory attitudes towards women.
- (d) Review definition of rape law to place lack of consent at its center**
- (e) Remove the requirement in the rape law that sexual assault be committed by force or violence and any requirement of the proof of penetration**
- (f) Consider redefining sexual assault that either require the existence of "unequivocal and voluntary agreement" and requiring proof by the accused of steps taken to ascertain whether the complainant was consenting; or requires that the act take place in "coercive circumstances" and includes a broad range of said circumstances.**
- (g) Conduct training on the CEDAW and its Optional Protocols and in general recommendations for judges, prosecutors, lawyers and law enforcement officers
- (h) Conduct training for judges, prosecutors, lawyers, law enforcement officers and medical personnel in understanding the crimes of rape and other sexual offenses in a gender-sensitive manner to avoid further victimization of women.

The State should condemn rape and eliminate gender bias in the administration of justice in the prosecution of rape and eradicate the harmful effects of certain traditional or customary practices, and cultural prejudice.⁸ The investigation and prosecution of criminal cases for rape should be strengthened to ensure successful conviction of rape. This includes giving credence to the testimony of victims of rape. Successful convictions of perpetrators of rape will prevent other rape incidents from happening by sending a strong message that rape cannot happen with impunity. Effective prosecution and proper punishment of perpetrators of rape encourage rape victims to come out, file their cases, and get vindication of their rights.



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⁷ Communication under the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, Letter from CEDAW views on Karen Vertido Communication Vertido to CEDAW Committee (Nov. 29, 2007).

⁸ Preliminary Report of the UN Special Rapporteur on VAW E/CN.4/1995/42, 22 November 1994 (par. 6); Declaration on the Elimination of Violence Against Women (DEVAW), Gen. Ass. 48th Sess. Res. 48/104, Dec. 93, Article 4

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Introduced by REP. TEDDY BRAWNER BAGUILAT

**AN ACT REVISING THE DEFINITION OF THE CRIME OF RAPE AND ITS PENALTIES
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8353 OTHERWISE KNOWN AS THE
ANTI-RAPE LAW OF 1997**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress
assembled:*

SECTION 1. Title. - This Act shall be known as "*The Amended Anti-Rape Law of 2016.*"

SECTION 2. Rape as a Crime Against Persons. - The crime of rape shall be classified as a Crime Against Persons under Title Eight of Act No. 3815, otherwise known as the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997. Accordingly, there shall be incorporated into Title Eight of the Revised Penal Code a new chapter to be known as Chapter Three on Rape, to read as follows:

"Chapter Three

"Rape

"Article 266-A. Rape: When and How Committed. -

"1) Rape is a sexual assault that violates one's right to personal security and bodily integrity with the essential element of lack of consent. The crime may be committed by a man who has carnal knowledge of a woman without her consent, whether or not the woman suffers injuries; a man who touches or inserts his penis into the female's inner or outer vaginal labia, without her consent, whether or not the woman suffers injuries; a man who touches or inserts his penis into another person's mouth or anal orifice, without the person's consent, whether or not the person suffers injuries; a person who touches or inserts any instrument or object, including a finger, into the genital or anal orifice of another person, without the latter's consent.

"2) Rape is committed under any of the following circumstances:

"a) Lack of victim's consent, which can be determined by the following:

- i) there was no unequivocal and voluntary agreement of the victim;
- ii) the accused failed to prove the steps taken to ascertain whether the complainant was consenting;

"b) Through force, threat or intimidation, fraudulent machination or abuse of authority;

"c) The act took place in coercive or other similar circumstances⁹ rendering the complainant incapable of giving consent.

"d) When the offended party is **under sixteen (16) years of age**; or is demented or is deprived of reason and was not in his/her lucid interval during the sexual act; or is unconscious for any reason -- even though none of the circumstances mentioned above be present.

"Article 266-B. No Presumption of Consent - There shall be no presumption of consent in the following instances:

"a) when the complainant has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence. There is no burden on the part of the complainant to prove resistance;

"b) when the accused and complainant know each other;

"c) when the complainant failed to escape; or

"d) other analogous circumstances.

"Article 266-C. Penalty and Compensation in Rape - The penalty for the crime of rape shall be reclusion perpetua.¹⁰ The compensation shall be commensurate with the gravity of the violations of the complainant's rights, as determined by the courts.

"Article 266-D. Evidence in Rape - The following principles apply in appreciation of evidence for rape cases:

"a) No evidence of commission of force or violence is required for conviction.

"b) No proof of penetration is required for conviction.

"c) Findings of post-traumatic stress disorder, rape trauma syndrome and the like among victims of sexual violence shall be admitted as proof of lack of consent.

"d) *Rape shield* - The past sexual conduct of the rape victim shall be absolutely prohibited from being presented as evidence in court and shall not be admitted as evidence.

"e) The rape survivor's sworn statements and testimony must be received with credence.

"f) There shall be no standard form or criteria of human behavioral response from the victim in order to prove lack of consent.

"g) Failure to immediately report the crime to the authorities shall not destroy the credibility of the complaint.

"h) *Res gestae* evidence shall be admitted as evidence since the very first persons to whom the private complainant related the rape incident while in a state of trauma are crucial witnesses.

"i) Positive medico-legal findings of injury shall be admitted as evidence while absence of hymenal lacerations shall not disprove sexual abuse.

"j) Medico-legal and police stations should ensure proper DNA collection of samples, DNA analysis and courts shall admit these reports as evidence.

"Article 266-E. No defense, exemption, or extinguishment of crime or penalty in Rape - Subsequent forgiveness, marriage or other form of relationship between the victim and the offender shall not constitute a defense to a charge of rape¹¹ and shall not, in any manner or degree, extinguish the crime or the penalty.

⁹ See Namibia's *Combating of Rape Act* (2000) requiring the existence of certain "coercive circumstances", instead of proof of lack of consent and a similar definition adopted in the Lesotho *Sexual Offences Act* (2003). See Handbook for legislation on violence against women, Department of Economic and Social Affairs, Division for the Advancement of Women, United Nations Publication, New York, 2009, p. 27.

¹⁰ In Canada, the penalties are aggravated depending if on sexual assault with a weapon, threats to a third party, or causing bodily harm (section 272), and aggravated sexual assault, wherein the perpetrator wounds, maims, disfigures or endangers the life of the complainant (section 273).

¹¹ Lesotho, Namibia, South Africa, Swaziland, and Papua New Guinea have all criminalized marital rape. The Namibian *Combating of Rape Act* (2000) does so by stating: "No marriage or other relationship shall constitute a defence to a charge of rape under this Act". In 2002, the Supreme Court of Nepal in the case of *Forum for Women, Law and Development (FWLD) vs. His Majesty's Government/Nepal (HMG/N)*

"Article 266-F. Conduct and Procedure in Court and Preliminary Investigation

"(a) The prosecutors and judges shall take effective measures to ensure that rape proceedings are fast tracked.

"(b) The prosecutors and judges shall ensure impartiality and fairness in legal procedures for rape cases which should not be affected by personal views and values.

"(c) There shall be a right to appeal of victims of rape in cases of acquittals that are anchored on gender myths and biases.

"(d) *Conduct in preliminary investigation, inquests, hearings and other court proceedings* -Judges and prosecutors shall be receptive and respectful toward rape survivors who are testifying in court. Sexist remarks, lack of sensitivity and compassion by the judge or the prosecutor shall be prohibited.

"(e) Compromises shall not be allowed nor influenced by the court, otherwise, these acts shall be grounds for criminal, civil, or administrative liability.

"(f) The Department of Justice and the local government unit where the rape complaint was filed shall provide support for *pro bono* legal aid specializing in rape complaints.

"Article 266-G. Training – The Supreme Court (SC), Department of Justice (DOJ) and Philippine National Police (PNP), in coordination with the Philippine Commission on Women (PCW) shall:

"(a) Conduct training on the CEDAW and its Optional Protocols and in general recommendations for judges, prosecutors, lawyers and law enforcement officers.

"(b) Conduct training for judges, prosecutors, lawyers, law enforcement officers, medico-legal officers, medical personnel, social workers and local government officials in understanding the crimes of rape and other sexual offenses in a gender-sensitive manner to avoid further victimization of women and to ensure that personal views and values do not affect decision-making.

"Article 266-H. Counseling –The Department of Social Welfare and Development in collaboration with the Department of Health shall ensure the following:

"(a) Training of counselors in recognizing the common mental health issues that arise in survivors of rape;¹²

"(b) Training of counselors to maintain a compassionate attitude and non-judgmental demeanor when caring for individuals recovering from an incident of rape;¹³

"(c) Conduct of a pre-test and post-test counseling for medical tests for sexually transmitted infections (STIs), reproductive tract infections (RTIs) unwanted pregnancy, and Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome (HIV/AIDS);¹⁴

"(d) The following issues should be discussed with the patient:

- i) The risk of acquiring HIV from the specific rape exposure;
- ii) What is known and not known about the efficacy of Post-exposure prophylaxis anti-retroviral treatment (PEP-ARVs);
- iii) The importance of taking the HIV test and of receiving post-test counseling; and

found the marital rape exemption to be unconstitutional and contrary to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. In 2003, the introduction of the *Criminal Code (Sexual Offences and Crimes against Children) Act 2002* in Papua New Guinea abolished marital immunity in relation to rape.

¹² South African Model for Post-Exposure Prophylaxis, Kwazulu Natal Network on Violence against Women (KZN Network), 2008 citing common mental health concerns such as difficulty concentrating and remembering, bad dreams, insomnia, nervousness, fear, irritability, and mood swings.

¹³ World Health Organization & International Labour Organization, Post-Exposure Prophylaxis to Prevent HIV Infection: Joint WHO/ILO guidelines on post-exposure prophylaxis (PEP ARVS) to prevent HIV infection, Geneva, 2007.

¹⁴ South African Model for Post-Exposure Prophylaxis, Kwazulu Natal Network on Violence against Women (KZN Network), 2008.

- iv) The possible side effects of the medication should the physician and/or patient decide to take it.¹⁵

"Article 266-I. Protocol on Medical Provision and Standard Medico-Legal Examination and Report- There shall be a protocol developed on the medical provision of treatment of injuries, counseling, prevention and management of RTIs, STIs, unwanted pregnancy, and HIV/AIDS transmission including mother-to-child transmission for victims of rape.

"Article 266-J. Medico-Legal Examination and Report - There shall be Standardized Medico-legal examination reports, forensic rape kits, and the whole range of medical and psychological services for victims of rape violence including kits for: treatment and care for prevention and management of RTIs, STIs, and unwanted pregnancy¹⁶ and treatment and care to prevent HIV transmission and to prevent mother-to-child transmission of HIV.

"Article 266-K. Roles of Government Agencies

"(1) Monitoring and Evaluation — PCW shall conduct an annual monitoring and evaluation of the implementation of this Act and other related acts. DOJ, SC and PNP shall provide assistance to the PCW in the conduct of the annual monitoring and evaluation.

PCW shall be the central advisory, planning and policy-making body for the comprehensive and integrated rape prevention in the country. The PCW shall perform the following functions:

- "(a) Formulate a comprehensive and integrated policy framework to prevent the crime of rape;
- "(b) Monitor and oversee the strict implementation of this Act;
- "(c) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to rape through the LGUs, concerned agencies, and NGOs;
- "(d) Direct other agencies to immediately respond to the problems brought to their attention;
- "(e) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of rape;
- "(f) Exercise all the powers and perform such other functions necessary to implement the provisions, and attain the purposes and objectives of this Act.

"(2) Reports. — PCW, DOJ and SC, in coordination with concerned government agencies, shall submit to Congress comprehensive report on the activities and accomplishments related to this Act every four years. Such report shall contain assessments and evaluation of intervention programs, plans and strategies for the medium- and long-term prevention and management program on rape.

SECTION 3. Separability Clause. – If any provision or part of this Act is declared void or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 4. Repealing Clause. – Article 266 of Act No. 3815, as amended by Republic Act 8353, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

¹⁵ World Health Organization & International Labour Organization, Post-Exposure Prophylaxis to Prevent HIV Infection: Joint WHO/ILO guidelines on post-exposure prophylaxis (PEP ARVS) to prevent HIV infection, Geneva, 2007.

¹⁶ World Health Organization & International Labour Organization, Post-Exposure Prophylaxis to Prevent HIV Infection: Joint WHO/ILO guidelines on post-exposure prophylaxis (PEP ARVS) to prevent HIV infection, Geneva, 2007.

SECTION 5. *Effectivity Clause.*- This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,