

10TH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. No. 950 PH

Introduced by Senator Raul S. Roco

EXPLANATORY NOTE

Article II, Section 14 of the 1987 Constitution declares:

"The State recognizes the role of women in nation building, and shall ensure the fundamental equality before the law of women and men."

Yet certain provisions of law preserve inequality between men and women. Such fundamental equality before the law can never become real and meaningful where the law has is based, and perpetuates wittingly or unwittingly, discriminatory attitudes and assumptions, which in turn are based on myths and have no factual or scientific basis at all.

Viewed in this light, social scientist aver that the act of rape is a way by which a man asserts his perceived superiority or mastery over a woman.

Congress should lead the way in correcting these long fostered myths by reshaping the values and attitudes concerning man-woman relationships.

Having ratified the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, it is incumbent upon Congress to honor the Philippine commitment as a party to the internationally accepted principles of international law. Such being the case, Congress must therefore hasten the elimination of all forms of discrimination against women. Fundamental equality before the law of women and men can be achieved only when the legislature is sensitive to society's gender bias against women.

A universal symptom of gender discrimination and bias is in the treatment of rape victims. The fallacious concept of rape has made the crime more difficult to prove. Under existing law and jurisprudence, a rape victim is given the triple burden of proving that she is a rape victim, that she is telling the truth, and that the accused raped her not as a consequence of her provoking his sexuality. This situation breeds the inequity when the accused is justified in achieving sexual gratification, whereas the victim herself must be of chaste character if only to give credence to her allegations.

The Philippine law on rape is an anachronism in that it fails to take into account the changing concept of rape. Worse, it perpetuates the myths previously discussed. The Revised Penal Code, which is essentially Spanish in origin, classifies rape as one of the crimes against chastity when a woman's being chaste has no significant bearing to the crime. Actually, rape is an assault on the person of a woman with the male organ as the weapon of aggression. Indeed, rape is a crime of violence that violates a woman's dignity as a person.

Existing jurisprudence suggest that the appreciation of the degree of resistance offered by the victim is necessary to prove her lack of consent to the act of rape. A socio-legal paradox exists when the law requires a woman to be harmed or to harm her attacker, in turn, yet at the same time she is patronizingly presumed to be a victim who is willing to "suffer in silence" to avoid "shame and scandal." Worse, social stigma attaches to the rape victim rather than on the offender.

Because of this misconception, even our rules on procedure presume that inasmuch as a rape victim is willing to "suffer in silence," the law enforcers and the prosecuting officers can only move when the rape victim initiates the complaint. Procedural rules have classified rape as a private crime in that as it is a crime primarily against the person of the rape victim, it cannot be prosecuted de officio. Hence, incidents of rape in the country are often ignored, unacted upon, and remain unprosecuted by the very officers of government who have the primary responsibility to enforce the law and render justice.


Through the years, more and more rape victims are articulating their experiences and frustrations in prosecuting the offender, the provisions of the Revised Penal Code on rape have proved to be inadequate to cover the varied nuances and circumstances of the crime. Hence, the need for a special law on rape.

Other than the need to change attitudes and social mores regarding men-women relations, another situation which needs to be addressed is the improvement of the relations between husband and wife. All too often in the past, husbands used to invoke the marital relations as a justification for abusing their spouses. The Congress should take the lead in enunciating policies that would rectify this iniquitous situation. Thus, under this proposed bill, the mere fact alone that the accused is the husband of the victim will not exculpate him from criminal liability if it is proved that he committed the acts defined and punished therein.

Since the attitudes of the law enforcer will have a major effect on the prosecution of the offense, there is likewise a need to train law enforcers and judicial officers on gender-sensitivity and the legal management of rape.

As there has been a significant increase in the number of rape incidents, recorded or unrecorded, many of which remain unprosecuted, as complaints of rape on women in institutions or in detention are continued to be ignored, the time has come for Congress to mold new attitudes and meet social demands and reform the laws on rape with the view of providing immediate assistance to the victim and bringing the offender to justice.

In view of the foregoing considerations and to ensure a more humane and equitable response to violation of women's rights, the immediate approval of this bill is strongly urged.


RAUL S. ROCO
Senator

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RECEIVED BY: RA

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AN ACT
PRESCRIBING A SPECIAL LAW ON RAPE, AMENDING ARTICLE 335
OF REPUBLIC ACT NO. 3815, OTHERWISE KNOWN AS THE
REVISED PENAL CODE, RECLASSIFYING THE SAME AS A CRIME
AGAINST PERSONS, INSTITUTIONALIZING MEASURES FOR THE
RECOVERY OF RAPE VICTIMS AND THE EFFECTIVE PROSECUTION
OF OFFENDERS, AND FOR OTHER PURPOSES.

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

SECTION 1. Short Title. -- This Act shall be known as the
"The Anti-Rape Act."

SEC. 2. Definition of Terms. -- As used in this Act --

(a) Rape - is a crime committed under any of the following
circumstances:

(1) By having carnal knowledge of a woman

[a] Through force, threat, or intimidation;

[b] When a woman is deprived of reason or is otherwise
unconscious;

[c] when the woman is below twelve (12) years of age,
even though neither of the circumstances mentioned
above is present; or

(2) By introducing any instrument or object into the
genital or anal opening of a woman's body under any of the
circumstances stated in the first paragraph, except when the
same was made with the consent of the woman for medically-
recognized and accepted treatment conducted by a duly
authorized physician.

(3) By any person who shall insert any part of his or her body into the mouth, genital or anal orifice of a woman, under any of the circumstances stated in paragraph one (1) of this Section.

The fact alone that the offender is the lawful husband of the offended party will not negate the commission of the offense, if carnal knowledge was accomplished against the will of the wife and under scandalous circumstances or when the husband at the time of the commission of the act, is afflicted with Acquired Immunity deficiency Syndrome (AIDS) or any sexually transmissible diseases, or when the husband has in fact abandoned the wife without justification for at least one (1) year, or has been charged with bigamy or concubinage.

(b) Law Enforcer - shall include any person who, by direct provision of law, popular election or through appointment by competent authority is charged with the maintenance of peace and order, enforces and compels the observance of existing laws, rules, and regulations, and local ordinances enacted for the welfare of the community. It includes but is not limited to the elements of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), prison guards and wardens, and other national and local government officials.

SEC. 3. Crime Against Persons; Penalty. -- The crime of rape shall hereafter be considered as a crime against persons and shall be punishable by *reclusion perpetua*.

SEC. 4. Who May File Complaint. -- A complaint for rape may be filed by any of the following individuals:

- (a) The offended party;
- (b) Her parents or legal guardian;
- (c) Her grandparents or collateral relatives;

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(d) The officer or social worker of the Department of Social Welfare and Development, or of a duly licensed child-caring institution, orphanage, home for the aged, mental hospital or other similar institutions under whose care or custody the offended party is committed;

(e) A concerned, responsible resident of the barangay where the crime was committed but only if any of the persons mentioned in the four preceding paragraphs have expressly given their consent to the filing thereof.

SEC. 5. Duty of Law Enforcer. -- Upon receipt of the complaint for rape, it shall be the duty of the law enforcer to:

(a) Immediately conduct an investigation within twenty-four (24) hours from the time of the receipt of the complaint;

(b) Arrange for counseling and medical services for the offended party;

(c) Gather evidence for the arrest and prosecution of the offender; and

(d) Make a report of his investigation and, on the basis of the offended party's testimony and any additional evidence, file the necessary complaint against the offender.

The concerned police investigator, or the examining physician, preferably of the same sex as the complainant, shall ensure that only persons expressly authorized by the complainant are allowed inside the room where the police investigation or examination is being conducted.

The penalty of *prision correccional* in its minimum period and suspension shall be imposed upon a law enforcer who, in dereliction of his duties as required in the preceding paragraphs, shall fail or refrain from performing his duties or shall tolerate the commission of the offense.

SEC. 6. Protective Measures. -- A complaint for rape filed against a member of the AFP, of the PNP or against any government official charged with the custody of the complainant, shall warrant an immediate suspension of the law enforcer for the duration of the preliminary investigation: *Provided*, That such suspension shall not exceed sixty (60) days: *Provided, further*, That if no evidence is found at the time of the completion of the preliminary investigation, the respondent law enforcer shall be immediately reinstated without loss of seniority rights and other benefits appertaining to his office.

It shall be the duty of the superior officer of the respondent law enforcer to:

- (a) Facilitate the free, speedy and objective investigation of the complaint; and
- (b) Ensure the protection of the complainant.

The offended party or any member of her family may, upon request, withhold her name from the records until the court has acquired jurisdiction over the case.

SEC. 7. Damages. -- The offended party may be entitled to damages under any of the following circumstances:

- (a) The Court finds that the offended party is suffering from moral degradation brought about by undue and sensationalized publicity.

In this case, the editor, publisher, reporter or columnist in case of printed material, the announcer or producer, in the case of television and radio broadcasting, the producer and director of the film in the case of the movie industry, shall be held liable for damages;

- (b) The offender knew of the pregnancy of the offended party at the time of the commission of the crime:
- (c) The offender is infected with the HIV virus or is

otherwise suffering from a sexually transmissible disease at the time of the commission of the crime.

SEC. 8. Support Services. -- The Department of Health in coordination with the Department of Social Welfare and Development, and other non-governmental organizations, shall establish a Women's Crisis Center which may be housed in a hospital, health clinic, or in any private place, in each municipality to provide immediate medical examination, psychological counseling, and other health services to an offended party.

SEC. 9. Personnel Training. -- The Commission on Human Rights, in coordination with the National Commission on the Role of Filipino Women, the Department of Health, the AFP, the Integrated Bar of the Philippines and other non-governmental organizations, shall develop a training program for law enforcers and barangay officials on:

- (a) Gender sensitivity; and
- (b) Legal management of rape.

SEC. 10. Evidenciary Requirements. -- Verbal objection or physical resistance in any degree of a woman against any form of sexual harassment or carnal knowledge, or any situation which renders her incapable of exercising her free will shall be *prima facie* evidence of lack of consent.

The following shall not be construed as indicative of consent nor shall it be considered as tending to establish the improbability of the commission of the crime;

- (a) The sexual history of the offended party, or the nature of her work, such as prostitution;
- (b) The amorous relationship between the offender and the offended party.

SEC. 11. Repealing Clause. -- Article 335 and 344 of

Republic Act No. 3815, as amended, 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.

SEC. 12. *Separability Clause.* -- If any part, section, or provision of this Act is declared invalid or unconstitutional, the other parts thereof, not affected thereby, shall remain valid.

SEC. 13. *Effectivity.* -- This Act shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

Approved,