

Female Friendship Louella Dizon's "Till Voices Wake Us"

A Thesis Submitted to the Central Department of English, Tribhuvan University
in Partial Fulfillment of the Requirements for the Degree of
Master of Arts in English

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November 2014

Letter of Approval

This thesis, entitled " Female Friendship in Louella Dizon's *Till Voices Wake Us*" submitted to the Central Department of English, Tribhuvan University, by Balika Sharma, has been approved by the undersigned members of the Research Committee.

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I. Critical Discourses Analysis on *Muluki Ain* Chapter on Rape:

An Introduction

This research focuses on the discourse analysis of the “chapter on rape” from the *Muluki Ain*. Apparently, *Muluki Ain* is a legal code, however, its text and the terminologies are the linguistic product embedded with social meaning. Thus, this research focuses on the discursive process and context of defining on ‘rape’ in *Muluki Ain* and its meaning in changing context as the amendments are being made. This research draws the history on defining rape from its early stages of documentation as the chapter on *Muluki Ain* and till this time to examine how discourses are subject to change. Meaning making is a social process that is embedded with different discursive powers circulated in the social and its impact on legal discourse. Legal discourses are the products of social discourses at the same time legal discourses also affects the social discourses. Therefore, there is a kind of give and take between these discourses. Social discourses mean how ‘man’ or ‘woman’ ‘husband’ or ‘wife,’ are perceived as different genders. It suggests the process of construction of ‘gender roles’ from which the concept of ‘sex’ and ‘rape’ are defined.

The aim of semiotic study is to understand the system of signs which creates meaning within a culture. It is to understand the underlying structures that make meaning possible. Critical Discourse Analysis is the study of language in social context. This research finds out how the language has changes it discourse and it has been changing according to the time, situation, circumstances and the use of the words used in *Muluki Ain* regarding ‘rape.’ In general sense the word ‘Rape’ has the negative connotation. Rape is the heinous crime against humanity. The ‘sexual relation without consent’ is defined as rape in the early period. The word ‘consent’ is vague. ‘Consent’ cannot be defined in the qualitative measures. Language is the measuring rod for communication and for measurements. Previously consent is taken as the indicator for the physical relation. Modern Criminal jurisprudence defines the

consent with the free will. The consent acquired through fear, threat, duress or coercion or by subjecting her to an undue influence, fraud or by use of force or kidnapping her or making her a hostage shall not be deemed to be the consent. The consent acquired in the state of unconsciousness shall not be deemed to be the consent (Muluki Ain, Chapter on Rape). The consent obtained with undue influence and by using force is not valid in modern time. Consent is not forceful matter in the sexual relationship, which is further more justified in the decision of the case on prostitution's rape.

Language is the center to the nature of law. Language works in terms of the goals and intentions of authors. Rape is rape whether that is committed within the close relation, spouses or with the stranger. The concept of Prostitution rape had been redefined in Nepalese context. Sapana Pradhan Malla vs HMG (NKP 2006) in this case, the Supreme Court issued the directives to protect the bodily right of the female. The dignity and self decision of the female is secured by the constitution of the Nepal, which no one forced to have the forceful sexual intercourse whether she is a prostitute. The theory of non-discriminatory principle is equally applied for all. Therefore all are equal in the eyes of law, prostitutes have also their independent life so, and law cannot discriminate them. In present time only the consent is not sufficient to have the agreement for the physical intercourse. Circumstances for taking consent and the relationship between the agent and the patient has also the significance roles (NKP 2006).

The legal semiotics seeks to identify the grammar of legal discourse. 'Consent' as the permission is challenged by the words use of 'force for the consent.' In the context of consent the structural definition of the word consent and the spiritual essence which the word carries has created the discourse in the Chapter on Rape in the *Muluki Ain*. Previously males are policy makers. Females are the objects of the law. The society regards male as the subject and female as the object. Laws in the

ancient forms reflect the dichotomy between male and female. In modern criminal jurisprudence the laws are redefined as per the need of the society as the interest of the people. Dichotomy between male and female have no any space in law making. Offence in rape is the controversy between the states in the jurisdiction. The measuring rod for the degree of offence in rape is differs from country to country. Indeed these definitions are more or less based on definition of the state power. The legal structures of legal codes may be less regulated by legal or moral rules. The state's power is dominance in each policy making. Criminalization and penalization of human action is directly related with the power and policy of the individual state.

Social goods are the stuff of policy as well as purpose of critical discourse analysis. Criminalization and penalization of the human conducts are directly related with the state (Pradhananga and Upereti 1). At the much deeper level policy is about how to distribute social goods in the society and how to control the social harms. Rape creates social and human harms. Rape is the heinous crime. In general sense the term rape means to have sexual intercourse without consent and using force. Rape as legal discourse explains, consists of two ingredients, Actus Reaus: physical element and Means Rea: mental element. General sense of rape is changing day by in modern criminal jurisprudence; Crime of rape has changes its nature in modern criminal jurisprudence. Similarly the terms are losing the older meaning and gaining newer meanings.

In discourse analysis, naming certain thing is supported with the activity it carries. So, the traditional definitions of rape as a crime are limited within the vaginal intercourse and the penetration as the activities that indicate the meaning of the term. The history of rape is primitive. The crime of rape is prevailing in every legal system of the world. It is also considered as a stigmatic and traumatic crime that is mostly committed against the women. Traditionally rape consists of unlawful physical intercourse between male and female only. The lack of consent and the use of force

are the ingredients of the rape but only these elements are not enough in modern criminal jurisprudence. The crime of rape has changed its nature in modern criminal jurisprudence. Change in definition of discourses expose changing ideology dominant in the society. Paul Gee, in “Introduction” to his: *Discourse Analysis* looks at “meaning as an integration of ways of saying (informing), doing (action), and being (identity), and grammar as a set of tools to bring about this integration” (Gee 8). The subject-object relation in defining rape is often male-female. In other words the male is the ‘doer’ and the female is the ‘object’ or the ‘victim’.

Different linguistic approaches to discourse analysis use different theories of grammar and take different views about how to talk about meaning. Within the perspective of action the offender is the subject, victim is the object and the act itself is the crime. Above discussed terms to define ‘rape’ as an ‘act of sex without consent’ has several synonymous versions. Another term used traditionally to define rape is ‘the unlawful sexual intercourse between male and female.’ The terms used, have similar meaning however, the later is broader than the first one. But, if we analyze the language of modern criminal jurisprudence, we find that it does not accept this traditional definition of rape. Rather, the meanings of sex, sexual intercourse have been changed. The linguistic definition of the word: Rape is not only limited within male as a doer; but modern discourse accepts that the offence is committed by female too.

New terminologies have been added to define sexual intercourse: ‘oral,’ ‘vaginal,’ ‘annals,’ ‘interventions by any means of object’ without consent. These terms did not appear in the old legal codes. Now, these terms are used in reference to defining ‘sexual intercourse’ thus its definition too has been changed. Now, the activities named above become crime against the human and falls under of sexual offence. The jurisdiction of rape is not only for the stranger and unwilling persons; it prohibited sex without consent to husbands. Modern jurisprudence of criminal law

criminalized sex without consent in husband and wife as the marital rape. Discourse analysis can “illuminate problems and controversies” (Gee 8). Rape in Nepalese system of definition of legal codes is narrowed. Nepalese law excludes many immoral activities for criminalizing.

In England Sexual Offence Act 2003 Criminalized the Sex with dead body as the sexual offence whereas Nepalese legal code excluded. Watching the sexual activities are criminalized by many countries like England and America but Nepalese legal provision is silence about such behaviors. Fingering the sexual organs is the new emerging area for the sexual offence it's too excluded by the Nepalese Legal Provisions. In other jurisdiction rape is define as the wider term as the sexual offences. Crime on rape is widening with the multi-socio cultural and technological investment. The world is developing in the global village. The substantive law is within narrow boundary. Law in action is the procedural part of the prosecutors. Court is the supreme authority to implement the law in action. With the socio-political consent rules and policies are forwarded. In Nepalese legal frame work the unwanted and unnatural sex and sexual activities are governed with the limited definition of rape. In Nepalese jurisdiction rape is the serious offence against female. Generally rape is the forceful sexual intercourse between male and female.

Discourse analysis explores the existing problems concerning the sexual offences. Discourses analyses provide the solution of the problems with the alternative methods. Indecent Assaults, Unnatural sexual Offences, Bestiality and unnatural sex are the subject matter of modern discourses analysis. Apart from this mention areas homosexual offences, bodily penetration, oral penetration, fingering the sexual organs, sexual relation with the crops, getting pleasure from watching the sexual activities, encouraging to commit the offence of sex and sexual activities are the modern discussable topics of the discourse analysis (Littleton 1279). From the

feminist perspective, rape is a direct result of our culture's differential sex role socialization and sexual stratification.

Traditional notions about sex roles are viewed as the basis of stereotyped attitudes about rape. Substantial legislative revision is a primary goal of the anti-rape movement. Although reforms have been instituted, rape laws vary from state to state, and the rate of change restricts attempts at a current, comprehensive assessment of their status. Recommendations for change incorporate, either implicitly or explicitly, at least a portion of the proposals originating with feminist critiques of the laws governing rape. The Influence of Feminism a variety of interest groups has expressed increasing concern over forcible rape, thus contributing to its definition as a social problem. "Anti-rape" and "rape prevention" are terms encompassing several interests, but the most active and vocal groups are those emerging from the women's movement and focusing on the objective of eliminating rape. Those groups adopting a feminist perspective have formulated the ideology of the movement. Therefore, the feminist analysis is inseparable from the anti-rape movement as a whole, though not coterminous with it.

Rape is rape it does not pardon even after marriage the Government of Nepal from the FIR of Samay Kumari vs Narayan Paudel Khatri alias Rabin (NRL 1337). The fact of the case is that the defendant married the victim after rape. They are living together as spouse. The issue was whether marriage after rape can exempt the defendant from the punishment? The Appeal court of Janakpur upheld the decision of the trail Court Sindhuli on the basis that the defendant married the victim and they are now coupled; in such situation the defendant cannot be convicted. But the plaintiff entered in the SC under the section of 12(1) (a) of the Judicial Administrative Act, 1991 and SC allowed the plaintiff to hear the issue. SC declares that there is no debate on the issue that our law has criminalized the rape as the crime. The objective of the criminal justice administrative is to maintain coherence in our society and to punish

the criminal and to declare the crime and to criminalize the act whether any act is criminal and whether to decriminalize any act which has been criminalized by the legislature. In conclusion, the offender will get exemption on the basis of marriage is against the judicial values and law (SCBD1337). As it has been well accepted the concept of marital rape, it is illegal to come in conclusion to give exemption to the offender from crime on the basis of marriage after rape.

Critical discourse analysis is not only a study of problems but also it seeks its solution and its impact as well. It is a theory based on reason. Nexus between discourses and power are interrelated. In discussion sex and gender is related with biology and society. Gender, according to Foucault, is the construct of the same social institution where males are associated with power, rational and females as vulnerable, irrational and means of consumption. For example, certain dichotomies are imposed as definitive of human existence and are operated in ways which have direct effects on society and the social security making process.

Discourses are produce in which concept of madness criminality, sexual abnormality and so on are defined in relation to concepts of sanity, justice and sexual normality. Those discursive practices have no universal validity but are historical dominant ways of controlling and preserving social relations of exploitation. (Seldon and Widdiwson 164)

Language is directly related with power and politics. From Foucaudian perspective, power is neither universal nor reified biologically but exists discursively within historical dimensions that are not fixed. Power relationship between males and females are biologically determined, there exists no such discursive space in which power can be engaged to sustain or subvert an existing relationship. Power is static and therefore cannot function as subject or object of political change. Traditionally rape as a crime is committed only by males the shift in the definition of power seek

the offender with females and alternative gender too. The cultural construct is also the key element in defining the meaning of the power. The democratic system of the state seeks the diversified nature of the power which causes the change in the definition of the victim. The patriarchal dichotomy relationship had shifted in the modern criminal jurisprudence which is the main causes to redefine the provision of rape in modern time.

The inclusive democratic system redefines the provision of laws in the neutral language which is the impact of power decentralization. Discourses wield power but it is always in a state of flux, so now historicists believe that relationship between individual identity and society is mutually constitutive (Tyson 281). Michel Foucault has suggested that all definitions of insanity, crime and sexual perversion are social constructs by means of natural one because they are so ingrained in our culture. The definition of crime is the cultural one not the biological. Patriarchy is rooted on defining the crime. Various patriarchal mental frames are embedded in the society. Freud's theories, for instance, believed that women suffer from what he called "penis envy". Despite Marx's insights into the ways in which economy forces determine the lines of both genders, he focuses in economy not for the gender. Yet, Marxism helps us to understand law and custom to keep women economically, politically and socially oppressed as an underclass. Power is the basis of Foucault's analysis of society. That power is created through discourse, a social language created by particular way of understanding human experience. Among the most important but least studied forms of discourse is the legal discourse. A legal discourse is related within the scope of law and its implementation. Judges, attorney, lawyer, offender and victim are the key persons in the legal discourses. The subject matter of the law in words and law in implementation is basically the debatable one. Power, judiciary and lawyers are the subject for the interpretation of the legal words in action. State is for

the purpose of welfare. 'Discourses in the language of the law is asserts by Edwar Finegan:

Centrally, the phrases "language of the law" and legal discourse" refer to (a) language that arises in statutory law; (b) the interpretations of statutory law in judicial opinions; (c) various forms of courtroom language, including opening statements and closing arguments, direct examination and cross-examination of witness, and jury instructions; (d) written contracts that create legal obligations, including rental agreements, insurance policies, wills and liability waivers.

(Gee and Handford 483)

Judges are the umpire for the decision of the cases. Justice is provided through the medium of the court. Courts are the honor of people. Equality is the main principle of the court. Crime as an offence is declared with state on the basis of social customs and traditions. Rape as the crime is existed from the early history in human kind and its forms (jurisdiction) have been changed in modern criminal jurisprudence.

Discourses analysis allows making comparisons and contrasting with traditional and modern forms of rape. The contemporary discourses on concept of 'rape' can be compared and contrasted in terms of their wordings and meaning in context. This research has used 'Discourses analyses as a methodology to make the study on rape under Nepalese provision on jurisdiction. The rape is 'rape' that is traditional or in modern forms. Though discourses analysis helps to critically evaluate it with the modern changing issues. Among the traditional definition or in the modern definition rape is considered as the serious and heinous crime. In Nepalese jurisdiction rape is considered as the traditional form of the crime. Traditionally rape is defined as the unlawful sexual intercourse between male and female. But modern criminal jurisprudence does not accept this traditional definition of rape.

Rape as the term has the changing definition. Now the meanings of sex, sexual intercourse have been changed. The linguistic definition of the word: Rape is not only limited within male; the offence is committed by female too. Sexual intercourse may be oral, vaginal, anal, interventions by any means of object without consent that become crime against the human and falls under of sexual criminal behavior. The jurisdiction of rape is not only for the stranger and unwilling persons; it prohibited sex without consent to husbands. Modern jurisprudence of criminal law criminalized sex without consent in husband and wife as the marital rape.

Context plays vital role in changing the meaning of the crime of certain category. The word 'Marital Rape' is the new concept in the modern criminal jurisprudence. Nepal has not recognized the concept of marital rape till 2001. The 'context' for change can be linked to the 'democratic movements' of Nepal and exposure to the 'feminist discourses' in Nepalese social scenario. Discourses interact with each other and prepare context for change in the discourse of jurisprudence. Despite the fact that marital rape receives little public and scholarly attention, it is one of the most serious forms of violence between intimates. The research to date indicates that women who are raped by their husbands are likely to experience multiple assaults and often suffer severe long-term physical and emotional consequences. Given the serious effects, there is clearly a need for those who come into contact with marital rape survivors to provide assistance and challenge the prevailing myth that rape by one's spouse is inconsequential. Till this time some of the countries do not criminalized the unwanted sexual relationship between husband and wife as the Marital Rape. In Nepalese context Marital Rape has been criminalized through the extra- ordinary jurisdiction of the Supreme Court (SC). Example: Advocate Meera Dhungana vs HMG (S.C.B 5). This is the recent decision of the SC regarding the marital rape. SC declared that marital rape is an offence of rape under the chapter "on rape" of the *Muluki Ain*. In the case of Advocate Meera Dhungana vs

HMG, SC has defined "rape" as any unwanted sexual penetration or contact with the genital by husband that is the result of actual threatened physical forced or when the wife is unable to give affirmative consent. Every woman has the right treaties and other instruments. Marriage does not take away these rights from women and does not denote slavery and servitude. For this reason to suggest that husband can rape his wife, contradicts women's right of self-determination, self dignity and free existence. To force woman to submit their physical self against their will is a serious infringement of their right to self-dignity, self-determination and overall their human right. The decision if this case is a milestone of the SC of Nepal towards the changing context of the marital rape.

Marital rape is declared as the crime within the process of PIL not by the ordinary jurisdiction of the court. In this case the dimension of rape crime is moving into the modern context from the traditional jurisprudence. Till the present time the case of marital rape is endorsed only in local courts. Which justified the concept of lack of consent is the core concept of the rape crime that is accepted by all jurisdictions. Petitions are filling in the district courts but it has not been common in Nepalese system. It is worth here to outline a history of the changing context of rape as a crime in Nepal for a discursive analysis.

The chief concern of the criminal law is to prohibit behavior that represents a serious wrong against an individual or against some fundamental social value or institution (Ashworth 1). Criminalization of human conduct may be controversial issue in the society but it is ultimately determined by the contemporary politics through the legitimate legislature of the stage. Matter to be criminalized may be both universal and territorial in nature. It is true that in most if the crimes there is a common element of immorality and the harmful nature of the acts constituting crime (Pradhananga and Upereti 1). Discourse analysis is concerned with 'distributing the social goods' in other word speaking for just society in with no 'subject' position is

oppressing the 'object' as 'others. Traditionally, the basic function of criminal law is to criminalize the harmful human conduct as crime and to prescribe the amount of punishment in the case of violation of such rule of criminal law. The new dimension of criminal jurisprudence has added the new aspect in law that is to reparation of the crime victim (NLR 225). The account of history of Nepalese Criminal law before codification is as illustrated.

Discourses on 'rape' are sometimes linear while sometimes there are, Foucault points out, gaps in every discourse. The history of 'rape' in jurisprudence before introduction of *Muluki Ain* can be traced back to the Kirat Period. The period before Lichchhavi was the period of Kirat, who ruled Nepal about 800 years. Socio-political and legal context for defining crime was not systematic. In other words the discourses were not developed as independent disciplines. Crimes were not systematically defined at that period but enumerated some crime as the heinous among them Sexual Crime is considered as the serious and the crime against the human body (NLR 223).

Similarly, in Lichchhavi Period, the concept of *Panchapardh* is existed which is defined in *Dharmasastra*. The socio-political context was such that meaning of any act was defined in a less social but more religious line. In Lichchhavi period, sexual offence was one of the five grievous crimes. The sexual relation with any other women except his own married wife was an offence to society and religion. With or without consent of her was punishable. Giving food and drink to woman was also considered as crime. Likewise, sitting together in the same seat in a solitary place with mutual contract and also pulling each other's hair was also known as complete adultery (NLR 223). Serious punishments were given for the sexual offenders. We can see the linear development in defining the rape as crime.

Nepali history of Lichchhavi period is followed by Malla Period in which is regarded the pioneer is the codification of the law. The history of Malla period dates 1200 A.D to 1769. In this period, King Jyathiti Malla prepared the written text in

law. They prepared codes employing eminent Pundits, which is called *Manavnayashastra* based on Hindu religious text (NLR 223). This codified text is the milestone in the legal history of Nepal. The code based on *Narithdasmriri* alongwith other *Smirtis* like *Manusmriti* and *Yagyabalkyasmriti* (NLR 228). Sexual offence was one of the serious crimes at that period too. Sexual offence generally includes incest, other sexual offences like rape and adultery, unnatural sexual offences including sodomy, bestiality, having sexual intercourse during monthly period, having sexual intercourse in improper place, menstruation, passing urine in the female organ (NLR 229). Capital punishment was offered for those who committees rape crime. Discourses are ‘coded’ and ‘decoded’ at times. Thus, credit of first coding of the discourses on ‘rape’ including other goes to this period. Shah Period is another important period in terms of development of legal codes or discourses in Nepal. In the shah period Ram shah was very popular for the justice. *Nyaya napaya Gorkha janu* was the calices of shah period. Sexual Offence, rape, incest, adultery were the serious crime of the then period. Punishment was based on *Jasko pap usako gardhan* which reflect the modern concept of punishment. It shows that only criminal who indulged in criminal activities would only be punished and his family members won't be punished (NLR 230). The codification of the *Muluki Ain* in 1990 B.S is the first codified law in the history of Nepal. Nepalese legal system was based on *Dharmasastra*. Sexual offence includes adultery, incest, and sexual abuse with animals, homosexuality and inter-cast sexuality.

Time adverbials are important dividers of discourse categories. If we observe the language and its legal provision coded in the law of Nepal, Criminal law system is divided into two categories marked with two ‘shifters’ in other words two adverbials: ‘before’ and ‘after.’ The two categories of criminal law system are: before codification and after codification, primarily showing the temporal shift in their codification meaning and legal implication. Interestingly the legal codes are of two

types: written and oral. Before codification of the law the criminalization and punishment process was not in uniform order. The rulers used to impose the criminal sanction as per their will and interest orally. What they spoke was law. Power and politics are embedded in the sentencing of the punishment. The punishment system is based on cast system. The tools of language were discriminatory as per the status of the people. The sexual activities were taken as the top secret and hidden one. The process of sexual pleasure is limited only in male and female relation. Penile and vaginal intercourse is taken as the sexual relations between male female. Sex after marriage is permitted by the society. Sexual relation before marriage is taken as the social harms and immoral one. Sexual relationship is the language that is only digestible for the marriageable people. Sex is taken as the matter of productivity not of the pleasure making process. Hard and serious types of the punishment are imposed for the person who commits sexual offences. Sexual offences include only the unwanted and immoral relations between male and female. Children, old people, people of alternative gender, physical relation without consent were excluded by the definition of sexual offences. Codes based on will of the rulers and pronounced orally without based on 'written codes' are more random and autocratic. Thus, for uniformity and justice need of 'written' or 'coded' form was realized necessary.

Changing Discourse while analyzing the rape can be seen in the addition of different pre-fixes in the word "criminalization". This shows the cycling process of human conducts is always welcome by the criminal law. Criminalization, re-criminalization and de-criminalization are the cycling process of human conduct. Rape as the crime is always criminalized by criminal jurisprudence. A disagreement arising over an offence on Rape is always in discussion in every jurisdiction. Legal ruling based on precedent and this requires additionally a court comprising a set of neutral judges who use neutral language. In modern period society desires and demands neutral language. Revival of feminist awareness in language and gender

research search neutrality in the use of language. Rape as the offence against female is also influenced with the gender neutrality in language. Rape as the neutral offence is the demand of males.

Rape as the sexual offence is changing its jurisdiction in modern criminal jurisprudence. Rape as the offence against women is changing in its nature in modern few states. The concerns of crimes are not limited within male and female only. Alternative genders people are also equally chance to be victimized. Thus, in using language, social goods are always as stake, at least for some people (Paul Gee 7). A legal text like *Muluki Ain* is an official policy document from the government of Nepal. As such it is written in a legalistic social language, clearly signaled by a style in which we get a series of sentences beginning with the word “whereas” followed by comma. The debate between "and" and "or" carries huge gaps in legal discourses. The court drastically changed its decision in the case of using the word "and" and "or". Legal discourse show one way in which more powerful groups in society can influence less powerful groups (Gee 88).

After Codification of law the period after 1853, is taken as the period of the modernization of the law in Nepal. The scattered provisions were collected in the single form and formulated the form of the uniform system in the Nepalese legal system which is named as the *Muluki Ain*. *Muluki Ain* is taken as the first codified and systematic legal document in the history of Nepal. In discourse analysis the importance of codification of law is a significant event. *Muluki Ain* defines the crime on rape in its particular chapter and gives the specific jurisdiction for the offence related to sexual activities. The language of the earlier *Muluki Ain* and amendment version is directly affected by languages in the practices. Language has meaning only in and through practices. The language of the amended structure of the *Muluki Ain* had played tools for the implementation of the law. With the help of the language law helps for the betterment and welfare of the society.

The main purpose of the criminal law is to establish the peace and securities in the society by applying the law. Rape as the crime is existed from the ancient time. The forms of the crime in rape have been changed from time to time. Language is embedded in the culture and the law is directly embedded in the language. Only the black letters of the law cannot reformed the society it takes the help from the society and the culture. Society defines the harmful activities as the immoral and criminal one which is only punished and sanctioned by the law. In the interpretations of the law language has the magical power. The magic power of the language is dynamic in accordance with the political system, culture, status of the people, level of the people and the power of the language in action and i n the word. The provision on Chapter on Rape is the outcome of continuous and actively building and rebuilding process. Law does not only see the arrangement of the words rather it tries to find out the implementation aspects too. Language as the tools refer ass the symbolic and grammatical essence of the language too. Language can be expresses in technology, symbol system, objects, tools and distinctive ways of thinking. Law always refers to the language in action. The word Rape suggests the action with the crime. The mental element of committing the crime on rape is having immoral intention and the *actus reus* is having the sexual relation without consent. The definition on the crime on Rape is building process because language in-action is always and everywhere in active building process. The discourses analysis is embedded in the same language in the form of social institution. The frequent changes in the law show the dynamic and changeability of the legal phenomenon.

In 2001 the sexual offences are over criminalization by the 11th amendment of the *Muluki Ain*. Within this amendment victims are classified with their age group and the limitation of the punishment is also in accordance. In the case of gang rape, insist rape, child rape, pregnant rape and disable rape over criminalization is defined. Discourse on age factor is also an area of debate and amendments on laws on rape.

This research studies on the context of rape law as defined by the shifters or adverbials 'before' and 'after' 2001 as a time of point of departure. Before 2001, if a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of Sixteen years with or without her consent shall be deemed to be an offence of rape. *Explanation:* For the purposes of this Number: (a) A consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking (abducting) shall not be considered to be consent. (b) A consent taken when she is not in a conscious condition shall not be considered to be consent. (c) Minor penetration of the penis into the vagina shall be considered to be a sexual intercourse for the purposes of this Number (11th amendment of the *Muluki Ain*).

After 2001 a person committing rape shall be liable to a punishment, having regard to the circumstances of commission of rape and the age of woman, with the following imprisonment and fine: (a) from ten years to fifteen years, if the minor is below ten years, (b) from eight years to twelve years, if the minor is above ten years but below fourteen years, (c) from six years to ten years, if the minor is above fourteen years but below sixteen years, (d) from five years to eight years, if the woman is above sixteen years but below twenty years, (e) from four years to seven years, if the woman is above twenty years. (4) Notwithstanding anything contained in sub-section (3), if the husband commits rape to the wife, except in any of the following circumstances, he shall be liable to a punishment with imprisonment not exceeding five years. In defining the punishment the law assumes that if the husband commits forceful intercourse with his own wife that becomes rape. This evidence shows that discourses have no discrete boundaries because people are always, in history creating new Discourses, changing old ones, and contesting and pushing the boundaries of discourses. The activities which are declared as the crime cannot remain crime in long period and all the permitted activities cannot be allowed for long

lasting. Thus, the brief history of legal code on rape in Nepal is interconnected with different other discourses. “Discourse analysis can illuminate problems and, controversies in the world. Methodologically, this thesis employs ‘discourse analysis’ exposing how feminist’s subject position is emerging in legal discourse on rape. It can illuminate issues about the distribution of social goods, who gets helped, and who gets harmed” (Paul Gee 10). With the preview of discourses analysis the modern amendment in law is based on the political awareness and the growth of the feminism as a powerful discourse. Traditionally ‘male’ had been put in the subject or ‘doer’ position of rape, but this subjection position is threatened now. Thus, this research shows how feminist consciousness has entered into legal discourse as the key perspective to re-define *Muluki Ain* “Chapter on Rape.”

Within the preview of discourses analysis the modern amendment in law is based on the political awareness and the growth of the feminism. Feminism in legal sector is the key elements to adopt the consequences of the discourses analysis in *Muluki Ain* chapter on Rape. The research has been divided primarily into three parts. The first is the introduction part which shows the context of how legal code like *Muluki Ain* can be studied through discourse analysis. The second chapter is through analysis of *Muluki Ain* Chapter on Rape in which researcher have analyzed it how other social and political discourses are working on changes and amendments of the issue. The final chapter is a conclusion with new findings on the changing nature of discourse on rape in Nepal.

II. Definitional Shift in the Meaning of Rape in *Muluki Ain*

Amendment provision in chapter on rape in modern criminal jurisprudence is noticeable. The definition and limitation has been changing accordingly to the demand of the society and need of the people. Within this preview, some substantive and procedural problems are happening in the jurisdiction of rape. For, the purposes of those studies, the use of language in changing context is necessary to analysis through the socio- political discourse. Traditionally male assumes subject position and defines all the form of linguistic discourses in which the female become the object. But in modern linguistic jurisprudence the law made by males cannot serve the necessity of female therefore female jurisprudence is necessary to define. Critical Discourses Analysis as a methodology analyzes how the dimension of rape has been changing in modern criminal jurisprudence with the influence of female empowerment in policy making sectors. What are the existing legal provisions of rape and is that sufficient to address the rape crime if that how and if not why? What are the necessary provisions that should be incorporated while amending the provision in law? Whether the legal provisions on rape laws are sufficient to internalized and international standard? Whether the definition of rape includes all the unwanted, anti-social and unlawful sexual offences or not? In the circle of this afore mentioned quarries the researcher analysis the discourse on law in action as dynamic one.

Law cannot be static in nature. Law serves for the betterment of human purpose. Providing justice is the ends of the law. Practice of law which is called advocacy is after all a discourse analysis to give subjective agency and power and justice to the victim. Amendment process in law helps to satisfy the desire of people. Amendment is based on the concept of languages in use. Objectives of

the amendment of legal provisions can be interpreted as speech acts in changing context. Regarding the use of language, language communicates and creates the solution of the problems. Amendment in legal provision had the pragmatic purpose in research. Why amendment had taken in the linguistic phenomenon: aims and objectives to achieve the amendment are to study the historical context of rape. Discourses analyze in the legal provisions of rape in modern criminal jurisprudence. To analyze the case laws this influenced the prevailing laws and definitions of rape. To identify the changing definitions of rape and provide constructive solution within the preview of critical discourses analysis. This study is significant to fulfill the changing context of rape in modern criminal jurisprudence.

Crimes have the dynamic nature. The exploration of this study may provide some changing ideas in the modern criminal jurisdiction about the rape. The researcher observes historical background and presents situation of rape and assumes the conditions for upcoming days. The problems and solutions, identified by this study may provide some ideas for the future legislation, laws making and implementation of the laws. The subject matter of the study is very vague, it is necessary to categorize its nature within the linguistic arena therefore it has been limited to the Nepalese Sexual Offences Law and National Code *Muluki Ain*. This study has also examined some of the decisions of the Supreme Court that influence the amendment of the National Code and influence regarding the National Sexual Offence Law. The study has contextual finding on rape law which cannot be generalized in the context of other offences against women. Rape is the heinous crime. In general sense the term rape means to have sexual intercourse without consent and using force. Rape consists of two ingredients

Actus Reus: physical element and Mens Rea: mental element. General sense of rape is changing day by day in modern criminal jurisprudence. The traditional sense of rape is limited within the vaginal intercourse and the penetration. The history of rape is primitive. The crime of rape is prevailing in every legal system of the world. It is also considered as a stigmatic and traumatic crime that is mostly committed against the women. Traditionally rape consists of unlawful physical intercourse between male and female only. The lack of consent and the use of force are the ingredients of the rape but only these elements are not enough in modern criminal jurisprudence. The crime of rape has changed its nature in modern criminal jurisprudence.

Definitional change is noticeable. Traditionally rape is defined as the unlawful sexual intercourse between male and female. But modern criminal jurisprudence does not accept this traditional definition of rape. Now the meanings of sex, sexual intercourse have been changed. Rape is not only limited within male; the offence is committed by female too. Sexual intercourse may be oral, vaginal, anal, interventions by any means of object without consent that become crime against the human and falls under of sexual criminal behavior. The jurisdiction of rape is not only for the stranger and unwilling persons; it prohibited sex without consent to husbands. Modern jurisprudence of criminal law criminalized sex without consent in husband and wife as the marital rape. Discourse analysis is always in flux. Michel Foucault has suggested that all definitions of insanity, crime and sexual perversion are social constructs by means of which ruling powers maintain their control. We accept these definitions natural only because they are ingrained in our culture. Power is the basis of Foucault's analysis of society. That power is created through discourse, a social

language created by particular time and place it expresses a particular way of understanding human experience.

Definition of 'sex' itself has been revamped. Law of sexual offence evokes controversy. Most rape research and reporting have been limited to male-female and female-male. In modern criminal jurisprudence; rape is widening its jurisdiction and definition as between male-male, female-female, male-female, female-male, child and baby, in-relationship, alternative gender, date, gang, prisoner, war, statutory, and with animals also. Some legal codes on rape do not legislate against women raping men, as rape is generally defined to include the act of penetration on behalf of the rapist. The traditional concept of vaginal penetration is challenging with the oral penetration and other unnatural sexual activities, since it includes other than female.

In modern criminal jurisprudence new semiotics has been borrowed from other discourses like medical science. HIV/AIDS was not a term in use at the time of first Muluki Ain in 1962. It has not been linked with the idea of 'trauma' in its original drafts; however they have been included in modern amendments. Rape creates post traumatic and problematic situation. Pregnancy and HIV/AIDS with the mental disturbances are consequences of the rape crime. It is not only the national problem but universal and global phenomenon. Rape has changing and dynamic in its nature. Traditional jurisdiction has been redefined by most of the legal system of the world and has been liberal on relating to the constituent elements. Despite the changing nature of the subject matter the research is based within its changing nature too. The language is changeable with the need of the society. Previously sexual offences are committed with the strangers. Perpetrator of the crime is usually the unknown one. Sport of the crime is lonely and isolated areas. The offences of rape are happened in the distance of human existence. While in modern period the perpetrator is

significantly different. Only the unknown perpetrator is not limited in the offence of rape. Law from the lens of female perspective is readdressing in modern time. The legislature has the primary authority to formulate the law. Legislature is the important organ of the government. The executive have the power to execute the daily function of the government. Last but not the least the judiciary has the role to implement the function of the law. Critical discourses analysis evaluate how the law making is affected with the modern trend of female empowerment and the participations of female in law making.

Politics is the major component of the state to determine the system of the nation. In the modern world democratic forms of the government is prefer by multiples of the nations. Previously monarchial and autocratic systems were governing in the world which imposes the law for the people. The modern democracy demands the participation of the people in policy making. The changing in the definition of rape and widening the area of the sexual offences is the result of the changing context of the government system of the state too. The policy is directly affected with the mental status of the policy makers. The education system of the state and the forms of the government determines the choice of the people. That activity which directly or indirectly harms the society is criminalized by the modern criminal jurisprudence. Rape as the heinous and serious crime is directly related with the peace maintaining of the society and human right of the people. In modern criminal jurisprudence rape is rape if there in use of force in this context Dr. Pro. Rajit Bhakta Pradhananga and Dila Ram Shrestha asserted-

Rape is the hidden crime. Rape is rape weather that is done by the stranger or by the husband. Every woman has the right to say no and has right to control own body to make her decisions

about having sex, using birth control, becoming pregnant and having a children. She does not lose these rights if she marries. The word marital rape is an emerging and new concept in criminal jurisprudence. Only in 1994, Britain acquired marital rape as an offence. Nepalese rape law and the judicial practice has been considering a rape only if it is vaginal intercourse. Other intercourses like, anal and oral is the subject matter of unnatural sexual offences. (Pradhananga and Shrestha 38)

In criminalization the Rape as the offence the tool of language are embedded in the social institution. Criminalization of the human action is the process of build and rebuild with the words. Legislature imagines the language in action. In legal interpretations language is not only the words. Each of the written text has the essential and meaningful interpretation. The interpreting function is carried in action by judiciary. Law is interrelated with the symbols in the judiciary. The use of "and" and "or" create irreparable differences in the implementation of the legal decision.

According to Christine Littleton -

From the feminist perspective, rape is a direct result of our culture's differential sex role socialization and sexual stratification. Traditional notions about sex roles are viewed as the basis of stereotyped attitudes about rape. Substantial legislative revision is a primary goal of the anti-rape movement. Although reforms have been instituted, rape laws vary from state to state, and the rate of change restricts attempts at a current, comprehensive assessment of their status. Recommendations for change incorporate, either implicitly or explicitly, at least a

portion of the proposals originating with feminist critiques of the laws governing rape. The Influence of Feminism A variety of interest groups has expressed increasing concern over forcible rape, thus contributing to its definition as a social problem. "Anti-rape" and "rape prevention" are terms encompassing several interests, but the most active and vocal groups are those emerging from the women's movement and focusing on the objective of eliminating rape. Those groups adopting a feminist perspective have formulated the ideology of the movement. Therefore, the feminist analysis is inseparable from the anti-rape movement as a whole, though not coterminous with it. Two long-term goals are paramount for the anti-rape movement: (Littleton, 1279-1337)

Time period and system differentiate the meaning of words. In Greek mythology rape of women or young is common theme which means to abduct and applied to all male only. In ancient Rome law *raptus* or *raptio* which means primarily kidnapping or abduction. Sexual violation is a secondary issue. The "abduction" of an unmarried girl from her father's household in some circumstances was a matter of the couple eloping without her father's permission to marry. Rape in the English sense of "forced sex" was more often expressed as *stuprum*, a sex crime committed through violence or coercion (*cum vi* or *per vim*). *Raptus ad stuprum*, "abduction for the purpose of committing a sex crime," emerged as a legal distinction in the late Roman Republic (Encyclopedia of Islam). The *Lex Julia de vi publica* (Rehman 108-127)) recorded in the early 3rd century AD but dating probably from the dictatorship of Julius Caesar, defined rape as forced sex against "boy, woman, or anyone.

Rape is a sexual offence. The measuring degree of the crime on rape is different from country to country. Some countries have neutralized the rape in gender perspective where as some are not. In Nepalese context rape is defined as if a person enters into intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of sixteen years with or without her consent shall be deemed to be an offence of rape (Muluki Ain Chapter on Rape). Minor penetration of the penis into the vagina shall be considered to be the sexual intercourse for the purpose of this number (Muliki Ain Chapter on Rape). A person who committed sodomy (unnatural sexual intercourse) with a minor, it shall be considered to be an offence of rape (Muluki Ain Chapter on Rape 9a).

The crime on rape is dynamic and controversy in the universal jurisdiction. Rape is a type of sexual intercourse, which is initiated by one or more people against another person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority or against a person who is incapable of valid consent, such as one who is conscious, incapacitated, or below the legal age of consent. The essential element of rape is lack of consent and use of force. Absent of consent has been the crucial concept in many sexual encounter. The present or absence can make the difference between shared joy and a serious crime.

The traditional concept of the rape crime is shifting day by day. From the beginning of organized society rape is considered as the gender based crime that is committed against women by the men. But in the modern criminal jurisprudence the sexual behaviors of human being have changed and forceful sexual intercourse and behavior are committed not only against women but also against men and women. It is now started to consider as a crime that may be

committed by any man against any human being by man. *Muluki Ain* in chapter on rape defines rape: If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of sixteen years with or without consent shall be deemed to be an offence of rape. (a) A consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking (abducting) shall not be considered to be consent. A consent taken when she is not in a conscious condition shall not be considered to be consent.

The sexual Offences Act, 2003 of England had defined rape: (1) A person (A) commits an offence if (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B Consents. Being one of the most serious and heinous crimes that might be committed against Women, it is an inhuman and stigmatic offence that affect the whole society and nation. People who have been raped can be severely traumatized and may suffer from posttraumatic stress disorder in addition to psychological harm resulting from the act, rape may cause physical injury, or have additional effects on the victim, such as acquiring of a sexually transmitted infection or becoming pregnant. Furthermore, following a rape, a victim may face violence or threats.

Observation at language on new amendments, we can see the changing discourses in the redefining process of rape. Rape is defined only as the crime against female in the previous time. The definition of rape excludes male and children in the early phase. In modern criminal jurisprudence rape is the crime

against the humanity. It is forceful, coercive, non-consensual sexual intercourse with women by men. It is not only concerned with the identity and dignity of the female, but also directly related with women's several rights provided by International Human Rights Instrument and National Legal Regime. So rape is crime against human. The area of criminalization the sexual activities as crime of rape is broaden wider day by day. Recently Nepalese legal code *Muluki Ain* 11th Amendment and amendment of Gender Equality Act, 2007 has broadened the dimension of rape and includes the marital rape as the crime (Gender Equality Act). Gender Equality Act, 2007 not only redefine the rape it also increase the degree of punishment beside that it has created some circumstances in which culprits are additionally added some punishment when they committed certain categories of women and used certain type of modus operandi during the commission of rape. The dimension of the forceful intercourse with women by men has been shifting within the changing behaviors of human sexual desire.

In defining rape in language of jurisprudence the following essential ingredients of offence in crime on rape have been outlined. There are two essential ingredients of crime on rape: Actus Reus: The physical element of rape and Mens Rea: The Mental element of rape: Actus Reus is the physical element of the crime. The term "actus reus" is divided into two Latin terms "actus" and "reus". It is derived from the Latin word actus means deed (act) and reus means forbidden, prohibited or prevented by the law. In general actus reus means the act forbidden by the law. The actus reus is the essential element in every crime. Without actus reus we cannot define the crime. The actus reus of every crime is differ from each other. Every crime has its own actus reus. In most of the cases they are not identical because they differ from crime to crime. In the crime of rape sexual intercourse with a woman without her

consent is the actus reus. Actus reus is the physical, external, act that is required to commit the crime. Actus reus is seen physically. It is visible, seen and present physically. If actus reus of the crime not established then automatically a crime is also not established. Thus, *non actus reus no crime*. Actus reus is the voluntary human conduct which is committed in specific relevant circumstances and may be caused a certain consequence or result. Mens Rea is usually describe as the mental element in crime. Intention is a subjective concept & requires the highest degree of fault of all the levels of mens rea. "*Actus non facit reum nisi mens sit rea*". A man is not liable for his acts alone also guilty mind also need to become crime. Intention differs from motive or desire and first stage in commission of a crime. Intention to crime is not the crime when it does not publish. Having only the intention does not prove the crime, unless and until the crime or the conduct is happened. The intention, knowledge and recklessness of the defendant in relation to the pros not ribbed conduct (Ashworth 84). It is the mental process of mind accused person in which he have made a decision and choose to break the law. In short, mens rea does not refer to any single state of mind.

Modern discourses analysis defines the offence on Rape in multiple categories. In accordance to the nature of crime: (a) Natural rape and (b) Unnatural rape. In accordance to the sexual activities rape is represented with the following semiotics: (a) Statutory Rape (with or without consent): sexual intercourse with the minor or legally not permitted one, with in the restriction of the law and (b) General Rape (without consent). On the basis of victim that they suffer rape is classified into two: marital rape: sexual intercourse with spouse\wife without consent and stinger rape: forceful sexual intercourse with unknown person. On the basis of sexual intercourse: male rape: rape of male without his consent and female rape: sexual

intercourse with female without her consent and by using force. Boy child rape: sexual assault of male child and girl child rape sexual assault of female child. On the basis of intervention by any objects (a) Vaginal: interruption in vaginal organ by penis or any object (b) Oral: interruption in mouth of any part of the bodily organs (c) Anal: interruption in anal with penis or any object. Others: natural and unnatural sexual assaults.

With the kind of relationship the sexual activities are shifted from one relation to other forms. Traditionally only the strangers are the perpetrators in modern time anyone can be the offender. The shifts of the semiotics are defined with the attachment of the personal emotion. (a) Date rape: by boy friend of known person (b) Stranger rape: by Stanger or unknown person. (c) Use of drugs or intoxication (d) Absent of Consent for the last one. And the frequently happening kind of rape is Incest Rape: Incest is sexual intercourse between family members and close relatives. The term may apply to sexual activities between: individuals of close "blood relationships" member is of the same household, step relatives related by an adaptation or marriage, and members of the same clan or lineage. The incest taboo is and has been one of the most common of all cultural taboos. In many countries incest is illegal, so it has created consensual adult relationship as the victimless crime. Modern Criminal jurisprudence analysis the discourses of rape within the relationship between parental and blood relationship. Before the 11th amendment of *Muluki Ain* incest is taken in the lineage of father only, but after the 11th amendment both the father & mother's lineage is taken as the incest relation in the offence of the rape.

The draft criminal Code added the mention provision the crime on rape in the provision of incest explained:

not to commit incest (1) no person shall have sexual intercourse with a woman having the knowledge that she is the woman within the relationship of not to be married according to practices, tradition or rites in one's caste or descent nor shall such a woman agree to have sexual intercourse. (2) Whoever commits the offence referred to in sub-section (1) shall be liable to a punishment having regard to the branch, relation and generation as well, for having sexual intercourse in other relation, except the one referred to in clause (a), (b) and (c) within seven generations of one's own clan. (Chapter on Rape)

The purpose draft criminal penal code added the words like mother, lineage of mother, where as rape is committed with a woman having incestuous relation, she/ he shall be liable to an additional punishment for incest in the punishment to be imposed under this chapter. The modern discourses analysis added the concept of over criminalization in the incest relationship. The sex giver and sex taker is equally penalized in the modern criminal jurisprudence. (Draft Criminal Code, Chapter on Rape) Changes in the use of languages in the provision of rape make difference in its court as well as social practice. In earlier phase rape is define only in the preview of offence against the female. Modern criminal jurisprudence added many discourses in the provision of the rape. Consent is the vague and controversy in the defining provision regarding the crime on rape. Modern provisions widen the definition of rape which is additionally explains in Draft Criminal Code:

(a) Consent obtained by coercion, undue influence, fear, threat, misrepresentation, or abduction or taking hostage shall not be considered consent. (b) Consent obtained in the state of unsoundness

of mind shall not be considered consent. (c) Penetration of penis into vagina shall be considered the rape for the purpose of this Section.

(Chapter on Rape)

The definitions of purposed draft penal code is implemented for the solution of the existing problems that are arise in the implementation of the law in action. Human conducts are only penalized when the society feel the necessity of criminalization. The concept of separated from husband and a suit for a share of family property has been instituted, living separate from the husband having taken her share of property and "A" suit for divorce with the husband has been instituted. This concept of the changing concept is added within the development of post-relation of the marriage. In the initial phase of codification such the complexities in the relationship is not existed. Modern forms of life have developed the complex in the human relations and the form of the crimes.

The language in daily communication is reformed and rebuild with the changing political, socio-cultural and economical development of humans. Rape committed by the offender having HIV positive is the new concept in the provision of rape which is addressed with the over criminalization. If the rape of a woman is committed in group or the rape is committed with a woman having the pregnancy of more than six months or with a disabled or handicapped or physically or mentally ill woman or the rape is committed forcibly by displaying weapon, rape with a woman having incestuous relation, one shall be liable to a punishment with additional imprisonment of three years alone with the punishment provided for the general rape. This concept is added with the necessity principal in modern criminal jurisprudence for preventive purpose. The feminist perspective is highlighted in the process of law making. Law is regarded as the spoken and written language. The demands of

amendments in laws create new concept and innovation in the formation of the new laws. Crimes are always faster than the laws. The modus operandi of the crime is unlimited but the laws are limited in the nature. The general principle of the criminal law is that we cannot penalize anyone without criminalized the human conducts. Criminalization and penalization of the human conduct goes in parallel dimensions. Traditionally crime on rape is limited only by the stranger but nowadays even the close and nearer one can be the perpetrator. The Gender Equality Act added this mention provision:

Not to have sexual intercourse with detainee woman: (1) No government employee shall have sexual intercourse with a woman detained in a prison or custody nor shall he/she cause any other person to have sexual intercourse having created circumstance for sexual intercourse. (2) Whoever does have sexual intercourse or causes other to have sexual intercourse as referred to in sub-section (1) shall be liable to a punishment with imprisonment not exceeding three years and if such intercourse is an offence under this code or any other law in force for the time being, the punishment under this section shall be added into the punishment under that other provision. (Gender Equality Act)

Discourses analysis is minutely followed by the amendment of the Gender Equality Act. The purpose of Gender Equality Act is to maintain the gender neutrality in the use of the language. Feminist perspectives bridges different loopholes of the language in use. Gender Equality Act further explains:

Not to have sexual intercourse with woman under one's own protection or security: (1) No person shall have sexual intercourse with any woman to whom one has to afford protection or security or who is under one's care and no office-bearer or an employee of an organization that provides treatment or rehabilitation to an unconscious woman or the woman put in such organization for suffering from any physical or mental disease. (2) Whoever commits the offence referred to in sub-section (1) shall be liable to a punishment with imprisonment not exceeding three years and if such intercourse is an offence punishable under this Code or other laws in force, the punishment under this Section shall be added to the punishment provided for that offence. (Gender Equality Act)

Law regards the use of language on the basis of context and situation. The judiciary is the last resort to see the language in used. Implementation of the law necessarily follows the structure of language with the observation of the grammar too. The Gender Equality Act further explains:

Not to have sexual intercourse with a woman in office or receiving professional service (1) No employee engaged in a government office or a private office or a person providing any professional or commercial service shall have sexual intercourse with a woman who has come to such office or has come into contact in connection with such services while performing such official works or rendering such services or at the work place. (2) Whoever commits the offence referred to in

sub-section (1) shall be liable to a punishment with imprisonment not exceeding four years and a fine not exceeding forty thousand rupees if such intercourse is an offense punishable under this Code or other laws in force, the punishment under this Section shall be added to the punishment provided for that offense. (Gender Equality Act)

Sexual harassment is the term frequently used in the chapter on rape. Sexual harassment is necessary to define in the term of degree because the leveling of punishment is determined with the definition in the level of the crime.

Previously the word rape is used as the crime by male to female. In modern time it is not limited to males only. The amendment in the legal provision shows the changing dimension of the definition of the rape. The Gender Equality Act, 2007 tries to erase the gaps in the use of the language in the Chapter on Rape. New trend of the technology had added the challenges in the crime. In the amending process of the law the legislature must select the acceptable words in the acts. For the purpose of the equality, *Gender Equality Act* explains:

Not to commit sexual harassment. Not to abuse child sexually:
(1) No person shall sexually abuse a child. (2) Whoever, with a motive of having sex, (2) Not to have unnatural sex: (1) No person shall have unnatural sex with anyone against his/her will. (2) Whoever commits the offence shall be liable to a punishment. (3) Whoever commits the offence referred to in sub-section (2) against a child shall be liable to a punishment referred to in section 220 as well. (4) No person shall have

sexual intercourse with an animal or have sex in any unnatural manner. (2) Whoever commits the offence referred to in subsection (4) shall be liable to a punishment in a case one has had sex with a cow and with an imprisonment not exceeding one year and a fine not exceeding ten thousand rupees in case of other quadruple animals. (Gender Equality Act)

In the past 25 years, rape law has been the target of much criticism, resulting in continuous definitional changes in many jurisdictions. Much of this change is attributable to increasing societal awareness and condemnation of coercive sexual practices, especially between acquaintances. This change also is the result of increased political advocacy by rape victims and an activist feminist philosophical view of gender relations which redefines human sexuality in terms of political power. The primary legal response to these societal pressures has been either to alter the legal definition of rape by changing its elements or to redefine the meaning of terms formulated by law.

The revisionists' efforts have focused primarily on the appropriate definition of the terms "lack of consent" and "force." Many of the rape cases cannot be published because of the socio-cultural situation and unsecured position of the victims. Rape is the heinous crime but knowing as the victim of rape is double victimization; therefore victims want to hide the reality of being raped. Rape is the crime against the human right and human dignity therefore the vaginal intercourse and crime against female is only the narrow concept in the substantive criminal jurisprudence. The testing of sigma after 24th hours of the rape does not give the result but most of the cases are examined after the 24th hours. Thus, rape is not only the crime with individual physical act sometimes accompanied with verbal abuse but the consequences of rape

degrade the human life and their social standing. Life, liberty and dignity of human are violated by the rape crime. Rape causes physical, mental, socio-economic and traumatic situation. Definition of rape in sec.1 of the Chapter on Rape of the *Muluki Ain -1962* is insufficient to include all forms of rape. Therefore, newer amendments have been made. It shows that the languages of legal codes need critical attention. This purpose is better served by critical discourse analysis because Critical Discourse Analysis tries to achieve 'social good' though critiquing biased language.

III. Shift from Gender Biased Language to Language of Neutrality in Nepalese Jurisprudence:

This research comes to a finding that language on defining 'rape' in Nepal has been shifting from gender biasness to language of neutrality. Anyone can be a victim of rape or sexual assault. But some are more at risk than others: Women and girls are the vast majority of victims: Men and boys, however, are also at risk: Women of all races are targeted, but some are more vulnerable than others. Most victims know their perpetrators. Repeat victimization is common, the majority of perpetrators are male, young people are especially at risk: People who identify as lesbian, gay, bisexual, transgender or intersexual (LGBTI) are also uniquely vulnerable. The traditional citizenship identification as 'male' and 'female' has been blurred by the inclusion of third genders as social identity. LGBTI are also victim of the rape and sexual assault. Bisexual men, gay were raped in adulthood, compared to of heterosexual men. According to this research bisexual women have been raped, compared to of lesbians and of heterosexual women this is the changing trend in the modern criminal jurisprudence.

In linguistic utterance 'statement' and its 'intention' plays vital role. 'Consent' is an affirmative statement with affirmative intention. However, a consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking (abducting) shall not be considered to be consent. It is mentioned on the clarification of the chapter on the rape but the cases filed in the court in such situations the court declares as the attempt of rape which is directly contradictory with the basic principal of the criminal liability and *Means Rea* of the crime. As the *Geneva Conventions* and *International Humanitarian Law* developed, rape and sexual slavery were included in war crimes and crimes against humanity. Convention

Relative to the Protection of Civilian Persons in Time of War, in the traditional phase but in present its dimension has been changed. The traditional definition of rape is challenging the legal definition of the rape. Rape is not only the situation of unwanted and unlawful sexual intercourse within male and female but also the concern LGBTI, minors and unnatural too.

The time situation and sexual desire of human beings are dynamic and unconstrained therefore; the existing provision of the crime on rape can not address the frequent unwanted and unlawful sexual activities of the human. In the due time of sexual intercourse the consent is provided but the female withdraw the consent at the end. Such situation is not clearly mentioned in the legal provision; the context of consent is vague. Once the consent does not mean the consent for all. Rape is not only related with the physical status of victims but also related with the emotional, sociological, physiological and cultural life. Languages on defining rape in legal codes have been more objective and graphic in modern context. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with the emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without the emission of semen or even an attempt at penetration is quite sufficient for the purpose of law. As the heinous crime the repetition of the victim is common. Rape and sexual assault survivors often suffer from a wide range of physical and mental health problems that can follow them for life-long diseases including depression, chronic pain, diabetes, anxiety, eating disorders, and post-traumatic stress disorder. They are also more likely than non-victims to attempt or commit suicide. Rape crime has long term syndrome unwanted pregnancy, STD, HIV/AIDS and mental trauma can be occurred.

To hear the subjectivity of a victim in an unbiased way, Nepalese law should define Crime on rape in neutral sense. The definition of the Chapter on Rape cannot cover all unwanted and unlawful activities as the rape crime. Rape in Nepalese provision is needed to be redefined with sexual assaults. The perpetrator should be punished with the degree of crime. The silence of the victim is evaluated with the no crime situation so psychological impact of the victim should be minutely judge by the court. Rape law should not be generalized only with the sexual intercourse but the level of victim and degree of intention should be measured. State should protect the victim and helps to registers the FIR . Close hearing and Continuous hearing in rape crime is to be well maintained. Psychological counseling should be maintained by law. Except of penile penetration bodily penetration should incorporate in the definition of rape. Criminal Justice system should begin with the victim. Camera court should maintain and close hearing system should conduct in effective way. Rape as a term should define as a neutral gender it does not discriminate 'she' or 'he'.

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