

Revision of archaic sex crime laws falling short

Critics of state effort say proposals failing on crucial points

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Mika Kobayashi was 24 and bicycling home from work on a western Tokyo street on Aug. 31, 2000, when a young man drove up and asked for direc-



tions. To see his map, she dismounted and leaned in toward the driver's seat.

The next she knew, another man was standing behind her holding the purse she had left on her bike. Realizing she had been ambushed but desperate to recover the purse, she chased after the man, who quickly got into the back seat of the car and dragged her inside.

The man then blindfolded Kobayashi with a towel,

mounted her and threatened to kill her with a box cutter if she didn't stop screaming. Terrorized, she froze, unable to resist.

The assailant then groped her breasts, undressed her and — although she was having her period — raped her. With music blaring inside the car, all Kobayashi could do during the horrendous ordeal, recounted in her 2008 book, was pray for survival.

"My dignity was damaged so much I felt like my soul was killed," Kobayashi, 40, recalled in a recent interview with The Japan Times.

To women like Kobayashi, the government's ongoing attempt to revamp the nation's outdated sex crime statutes — enacted in 1907 with little regard for women — is long overdue. Subject to the overhaul are laws pertaining to crimes including rape and indecent assault.

But upon closer scrutiny, the changes under discussion by an advisory panel to Justice Minister Mitsuhide Iwaki are no root-and-branch reform, critics say.

Although rape is expected to be treated as a more serious

crime, the criteria for conviction will remain as rigorous as ever, and the new definition will still be out of date, the critics say.

More fundamentally, they say, increasing penalties will do little to curb recidivism because what is truly needed is a change in Japan's lukewarm attitude toward rehabilitating sex offenders.

The move to revise sex crime laws is a pet project of former Justice Minister Midori Matsushima, who vowed to toughen penalties against sex offenders when she assumed office in September 2014.

On Oct. 13, Iwaki asked the advisory panel to examine amendments proposed by his ministry based on a preliminary 10-month debate held by outside legal experts on how to overhaul the laws.

"We are glad the government is finally taking active steps to review and reform sex crime laws that have largely been overlooked in the past," said Kazuna Kanajiri, client service manager of Lighthouse, a Tokyo-based nonprofit organization that lobbies against human trafficking.

She regretted, however,

that the important issues discussed by the experts were not reflected in the Justice Ministry's proposals, including the age of consent.

Experts say the age, currently 13, should be raised to at least 15 or 16.

Anonymous prosecution

During its first session early this month, the advisory panel reached a tentative agreement to make crimes including rape and indecent assault subject to prosecution even if the victim doesn't lodge a complaint.

Japan remains one of the few developed countries where sex crime victims must initiate legal action themselves to prosecute. This has repeatedly been criticized by U.N. human rights committees.

The panel is also weighing a new penalty against rape and molestation committed by the "guardians" of children under 18, including parents, to curb incestuous abuse.

Another major topic to be deliberated is whether to increase the minimum sentence for rape to five years from three — a move that would put rape on a par with murder, robbery and arson. The panel will also

look into updating the definition of the crime, which currently applies only to vaginal sex, to incorporate anal and oral sex so male victims can be protected.

Kobayashi, who has exchanged letters and emails with close to 10,000 sex crime victims since publishing "Seijanzai Higai ni Au to koto-to" ("Falling Victim to Sex Crimes") in 2008, said she welcomes stronger penalties. Many rape victims, herself included, are so devastated in the aftermath of their experience that three years is hardly enough to come to terms with what happened, she said.

"Lots of victims live in the fear that their offenders will be back in society only after three years, while they themselves haven't been able to recover at all," Kobayashi said.

"I think, if they are given five years, victims will be able to feel like they can collect themselves at least once."

Rigorous criteria

While hailing harsher penalties as a crucial step forward, 41-year-old Jun Yamamoto, who as a teenager was routinely
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Mika Kobayashi, a rape victim who has publicly spoken about the issue, poses in Tokyo on Nov. 4. SATOKO KAWASAKI

Bid to revise nation's outdated sex crime laws falling short: critics

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plested by her father, pressed that the government could scrap the rigid criteria for rape, which experts say has prevented many women from being recognized as victims. The law states that rape only constitutes a crime when offenders resorted to "assault and intimidation."

This requirement is unrealistically narrow, Yamamoto said, because in reality offenders don't need to outright handle or threaten their gets to conquer them. She said simply shouting or catching people off-guard is often enough to render them powerless.

Violence is even less likely to be involved in acquaintance date rape, where parents, spouses or friends take advantage of close relationships, she said.

"It's like how a circuit breaker goes off," Yamamoto said, calling how, between the ages of 13 and 20, she endured her father's groping and fondling.

"I stopped thinking. I stopped feeling anything," she said.

Yamamoto now heads a Kyoto-based advocacy group lobbying for the empowerment of sexual abuse victims.

A proposal to extend prison terms, also envisioned by the panel, indicates the hurdle to being recognized as a rape victim will become even higher, according to Hiroko Goto, a professor at Chiba University Law School.

The longer the terms, the more careful judges will be



Midori Matsushima, seen at the time she was appointed justice minister in September 2014, has ordered the Justice Ministry to review the nation's sex crime laws. YOSHIKI MIURA

during the conviction process, she said, with the bar for the level of assault and intimidation deemed necessary to constitute rape becoming higher.

"If you raised prison terms but kept the 'violence and intimidation' rule as is, it possibly follows that the criteria for being recognized as a rape victim will become stricter, and fewer victims, especially those of acquaintance and date rape, will be protected," Goto said.

Others like Yamamoto and Goto have also slammed the new proposed definition for rape as extremely narrow in that it still stipulates rape as an act involving "insertion of a penis."

From the victim's viewpoint,

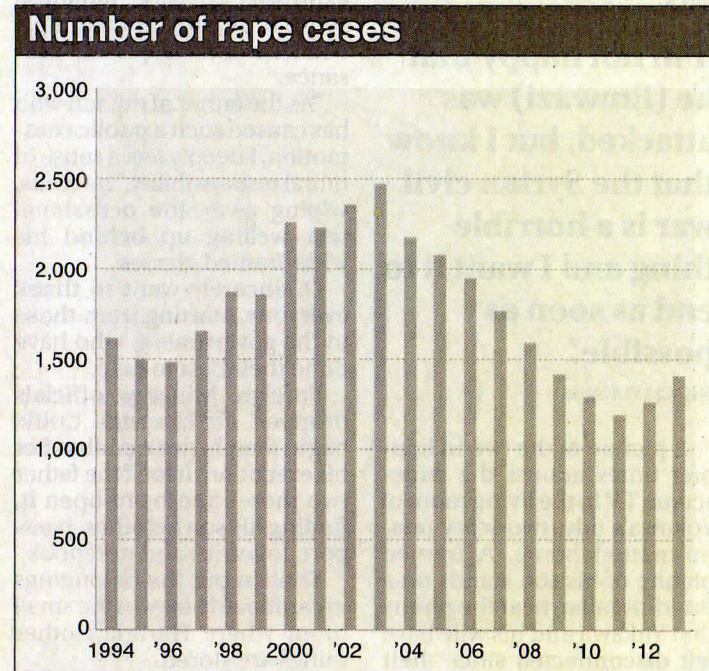
"it doesn't really matter" what is shoved into their bodies, be it a penis, finger or object, Yamamoto said. "Rather, it's the invasion itself that matters."

Professor Goto agrees.

"The proposed law's obsession with penis insertion suggests it is rather meant to protect women's virginity (instead of) their dignity," she said.

Curbing recidivism

Psychiatrist Hiroki Fukui, who heads the nonprofit organization Sex Offenders Medical Center, said stiffening penalties for sex offenders doesn't serve as a fundamental deterrent to recidivism because many repeat offenders are aware of the immorality of



SOURCE: National Police Agency

what they do but simply cannot stop.

The latest National Police Agency statistics show 51.6 percent of the 919 people arrested in 2014 in connection with alleged rapes were repeat offenders.

What they really need is treatment and rehabilitation, he said, adding that Japan lags significantly behind other developed countries, including the United States, Canada and the United Kingdom, in investing in efforts to reintegrate offenders into society, such as by helping them find employment.

The Justice Ministry does have its own correctional program for sex offenders, but it is "completely useless," Fukui

said, since all of its lectures take place in prisons, where offenders undergo no practical training on how to overcome their urges in a natural setting. No medical professionals are involved, either, he said.

But even more problematic, he said, is that pedophiles who are keen to be rehabilitated and who visit psychiatrists are turned away because "sex offenders here are not considered eligible for medical treatment," Fukui said.

"Simply penalizing them more harshly will never reduce their crimes."

'Don't deserve to exist'

Fifteen years after being raped, Kobayashi, a Tokyo office worker, spends most of her

private time responding to the deluge of email from sex crime victims desperate to confide their darkest secrets. Events that they feel cannot be shared with parents or friends.

At first glance, Kobayashi, who often smiles and cracks jokes easily, appears as if she put the ordeal behind her. She is, however, anything but all right.

Sex has become anathema to her, and her body instinctively trembles with terror at the thought of it. She abandoned hope of giving birth long ago.

Kobayashi also suffers from flashbacks whenever she encounters certain scenes or situations that jog her memory, such as when she sees a parked vehicle or hears music blaring in the dark.

She still remembers what the assailant looked like and how his voice sounded. But when she tries to conjure up those details, she feels as if she is being smashed in the head with a hammer and her mind goes blank, she said.

"I'm still afraid of him," she said. "If he suddenly appeared in front of me now, I'm sure every small step toward recovery I've made in the past 15 years would crumble in the blink of an eye."

Immediately after the incident, Kobayashi filed a complaint against her attacker, but he was never arrested.

"After the incident, I've come to see myself as such a dirty person and I sometimes think I don't deserve to exist," she said. "Nor am I allowed to become happy."