



GENDER NEUTRALITY OF RAPE LAWS: A DENIAL OF RIGHTS TO MEN?

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With the changing times and the fluidity of gender roles in the modern society, it has been an often debated subject as to whether the Union of India requires a law governing the offence of rape that is gender neutral, which means allowing for men and women to be regarded to as both potential offenders and potential victims. As the very nature of rape is dependent on the assertion of power of the perpetrator on the victim, the rape of a man as compared to the rape of a woman should be considered equally heinous. Several countries, like the United States of America, the United Kingdom and most recently, China have changes their rape laws to make it gender neutral. This paper analysis the requirement for such law in our country and the effect that it will have on the society.

The questions that arise in this regard would be:

1. Whether there is there a need for neutrality in the Rape laws of India?
2. What effect will such a law have on the male victims?

According to the National Crime Victimization Survey, rape is “the unlawful penetration of a person against the will of the victim, with the use or threatened use of

force, or attempting such an act”¹. Their definition of rape is not limited to the physical act of penetration but also includes the psychological coercion, penetration by foreign objects, and the victimizations suffered by male and female victims. This definition makes it clear that the bureau looks at the act of commission of rape as well as the victimization of rape as gender neutral. Historically, however, the definitions of rape have been gendered.

The traditional definition of rape; the carnal knowledge of a woman against her will, is a gendered approach to the offence of rape and reflects the patriarchal mindset of the world at large². This notion of a female victim and a male perpetrator conform to the traditional view of the patriarchal notion of rape, where men that have been victims of this crime are considered to have lost their masculinity³. This view not only colors the societal view of a male victim of sexual assault, it denies the victim his rights to a legal remedy under the law of the land. The emphasis on the traditional gender roles expected by the society leads to the further oppression of a raped male as the social standard is that only a woman can get raped as men are strong enough to protect themselves against their assailants⁴. This barrier leads to the isolation of the victim

¹Michael Planty, Ph.D., and Lynn Langton, Ph.D., BJS Statisticians, Christopher Krebs, Ph.D., Marcus Berzofsky, Dr.P.H., and Hope Smiley-McDonald, Ph.D., RTI International, *Female Victims of Sexual Violence, 1994-2010* May 31, 2016.

²Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?*, 1 SEATTLE JOURNAL FOR SOCIAL JUSTICE (2003).

³*Id.*

⁴*Id.*



due to the lack of support that they encounter.

In the case of India, the offence of rape, as under **Section 375** of the Indian Penal Code, after its amendment in the year 2013 by the Criminal Law Amendment Act (2013), is defined as follows:

A man is said to commit “rape” if he –

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; or*
- b. inserts, to any extent, any object or part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her do so to him with any other person; or*
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her do so with him or any other person; or*
- d. applies his mouth to the vagina, anus, urethra of a woman or makes her do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-*

First - Against her will.

Second - Without her consent.

Third – With her consent, when her consent has been obtained by putting her or nay person in whom she is interested, in fear of death or of hurt.

Fourth – With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifth – With her consent when, at the time of giving such consent, by reason of

unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and the consequences of that to which she gives consent.

Sixth – With or without her consent, when she is under eighteen years of age.

Seventh – When she is unable to communicate consent.

Where the exceptions to the provision are:

Exception 1 – A medical procedure or intervention shall not constitute rape.

Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under the age of fifteen years, is not rape⁵.

The punishment for rape, as enumerated in **Section 376(1)** States that:

Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall be liable to fine⁶.

As seen clearly from the above stated provision, the Indian Penal Code does not consider men to be victims of rape. The only solace that a man can find is within **Section 377** of the Indian Penal Code, which defines “Unnatural Offences” –

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment

⁵ The Indian Penal Code (1860), Act No. 45 of 19860, Section 375.

⁶ The Indian Penal Code (1860), Act No. 45 of 19860, Section 376.



*of either description for a term which may extend to ten years, and shall also be liable to fine.*⁷

This law made consent and age irrelevant by imposing a blanket restriction on any act, which included any non penile-vaginal sexual acts. Section 377, also called India's anti-sodomy law, is the only route for a male victim to find justice, provided that a man assaults him. Sodomy, however, is not considered to be actual rape, primarily due to the fact that there is no distinction between consensual and non-consensual sexual acts between two male adults. Moreover, it does not provide for any remedy to a man if the perpetrator is a woman.

The statistics brought forth by the Center for Disease Control, in the year 2010, found that 93.3% male rape victims reported of their perpetrators being male, but 1 out of every 21 males that were subject to unwanted sexual contact reported that they were "made to penetrate"⁸ by women, through the use of aggressive and coercive tactics, psychological pressure and coercion. The commission of such acts, against the will of the man causes the same psychological pressure that a female victim of rape faces⁹ and the absence of any legal recourse in this regard violates the rights of the men in the society.

⁷The Indian Penal Code (1860), Act No. 45 of 19860, Section 377.

⁸Thomas R. Frieden et al., *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (2011).

⁹Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?*, 1 SEATTLE JOURNAL FOR SOCIAL JUSTICE (2003).

In the case of *Bodhisattwa Gautam v. Subhara Chakraborty*¹⁰, the Supreme Court observed that "(Rape) destroys the entire psychology of a woman and pushes into deep emotional crisis... Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's Fundamental Right to Life contained in Article 21."

Keeping this view in mind, when we come to the case of male rape, the violation and the psychological effect that a man has in this situation is similar, if not identical, to the psychology of the woman. In both cases, the victim's right to life is being infringed upon and by recognizing only the woman's suffering and providing remedy for the same, it infringes upon the man's rights, as guaranteed under Article 14, of Equality before the Law. This means, as the state guarantees the right to equality before the law, the state violates this provision by not recognizing the male victim.

Atrocities suffered by male victims:

1. In 2015 a report brought forth fifteen instances of "corrective rapes" that were perpetrated in Telengana over 5 years. This act of violence is committed by the family and is categorized as a hate crime that is wielded to correct their homosexual children's sexual preference. In these scenarios, the homosexual individual is forced into having sex with their family members, maybe even a parent, to 'cure' them¹¹.
2. In 2015, a 16-year-old boy was sexually assaulted by his friend's mother.

¹⁰ (1996) 1 SCC 490.

¹¹ Rohini Chatterji, *Parents in India are using 'corrective rape' to cure homosexual children*, FIRSTPOST, June 1st, 2015.



According to the report that followed, when the boy had gone to meet his friend on Chembur, Mumbai, the mother spiked his soft drink. When he lost consciousness, she stripped him and forced herself upon him and recorded the entire thing. She proceeded to blackmail him and regularly summoned him to her house for the next three months. She threatened to accuse him of rape if he ever told anybody of what had taken place between them¹².

3. A 19-year-old male student of Banaras Hindu University was gang raped by five men inside a car within the campus of the university¹³. Despite filing a report, the police are lax in taking up the investigation.
4. A man who went through sexual abuse his entire life, beginning with his uncle at the age of 7 and then being gang raped at the age of 12, had no legal recourse for these violations as when he realized that it was happening to him, he was 18 years old¹⁴.
5. A male student, of Delhi University, was raped by men that were sent by his

girlfriend's father and tortured him after the act.¹⁵

As we can see through these examples, the case of male rape is not uncommon. The absence of statistics that prove the case in India is due to the largely accepted notion that men cannot be raped due to their strength and their masculinity¹⁶. What the society fails to understand is that the victims of masculinity are both men and women. The act of rape is not committed primarily with the intention of indulging in the act of sex but is rather an act of asserting their dominance and power over the victim by forcing the victim to subjugate against their will. The act of assertion caused a sense of helplessness in the minds of the victim, regardless of their gender and causes adverse psychological effects¹⁷.

Article 14 of the Indian Constitution guarantees to its citizens the right to equality before the law and the act of rape violates Article 21, which guarantees to all its citizens the right to life. By having a gendered law for rape, the government is protecting the right to life of one section of the society and not the other. The absence of a legal remedy for men results in a violation of Article 14 of the constitution.

Thus, in conclusion, there is a dire need for gender-neutral rape laws. Though we do not have the statistics necessary to make an estimation of the amount of male rapes

¹² Nirmalya Dutta, *16-year-old boy raped by a woman in Mumbai – can men be sexually assaulted?*, <http://www.india.com/news/india/16-year-old-boy-raped-by-woman-in-mumbai-can-a-man-be-sexually-assaulted-337583/>, Last accessed at 9:50 PM, 25th March, 2019.

¹³ *Banaras Hindu University male student abducted, gang-raped*, http://zeenews.india.com/news/uttar-pradesh/banaras-hindu-university-male-student-abducted-gang-raped_1922019.html, Last accessed at 9:50 PM, 25th March, 2019

¹⁴ <http://blogs.timesofindia.indiatimes.com/everything-social/this-story-of-a-male-rape-victim-will-shock-you/>, Last accessed at 9:50 PM, 25th March, 2019

¹⁵ <http://www.firstpost.com/india/another-shocker-du-student-raped-for-being-friends-with-a-girl-788445.html>, Last accessed at 9:50 PM, 25th March, 2019

¹⁶ Angelo Plantazis, *Notes on Male Rape*, 12 SACJ CRIMINAL LAW REVIEW (1999).

¹⁷ Nicola Gooch, *The Feminism of the Male Rape Victim*, UCL JURISPRUDENCE REVIEW (2005).



committed within the bounds of India, if we draw from international statistics and the cases that we read of in the newspaper, we may come to the conclusion that it is a substantial threat to the men in the society. Protecting women from any form of abuse as used against their gender and failing to do so for the men in the society will not lead to harmonious society, but to the denial of rights to men.

