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# GENDER-SPECIFIC RAPE LEGISLATION

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## **Abstract**

Rape is one of the most heinous crimes in the world today. Due to the patriarchal nature of our society and the fact that men are seen as the stronger and more dominant sex, it is widely believed that women are the only victims of rape and other sexual crimes and that men are the perpetrators. Although this belief is widespread, it is not true. Statistics show that men are just as vulnerable to sexual violence as women. Reports of male sexual violence have become common in recent years, but the number of reports is believed to be far lower than the actual number of cases of male sexual violence. The society's belief that men are strong and that only weak men cannot protect themselves from sexual violence explains why most of the sexual violence crimes against men go unreported. Homophobia towards male victims is another reason why victims are afraid to come forward. In addition to these the current state of the legislation also provides no incentive to male victims to come forward. Currently there are very few countries where male rape is even recognized as a crime. Among these countries too only a handful have any punitive legislation for the perpetrators of male rape. These laws mostly punish only men for sexually assaulting other men, there are almost no laws to deal with women offenders of rapes. In most countries, it is considered conceptually impossible for a woman to rape a man, even the definition of rape is gender specific in most countries. The Indian rape legislation are also gender- specific and there are no provisions for punishing the offenders for raping a male. These gender-specific laws must be amended and new legislation should be enacted to bring justice to all rape victims, regardless of their gender.

## Introduction

The word rape always makes us think of women as victims and men as perpetrators. Rape has always been considered a crime against women. Sexual violence against women is seen as a way of subjugating them to patriarchal authority. All over the world, several legislations exist to punish the culprits of rape, but only for committing rape of women. But in reality, even men are victims of rape and many other forms of sexual violence. But the idea that men are our protectors or they can't be raped has resulted in non-existence of legislation to punish the rape of men. Most sexual violence legislation includes language that refers to women as victims and men as perpetrators. Most laws use gender-specific terms instead of gender-neutral ones. In addition, male victims of sexual violence are seen as weak and pathetic, and society questions their sexual orientation and masculinity, which makes male rape victims less likely to report the cruelty they suffered. They fear the condemnation of the society for the sexual violence they have suffered. The few reported cases result in little or no punishment for the perpetrators due to the lack of rape legislation for male victims. In recent years, although some countries have recognized and even criminalized male rape, punitive legislation for it is still lacking.

### What is rape?

*“Since then I’ve always thought that under rape in dictionary it should tell the truth. It is not just forcible intercourse; rape means to inhabit and destroy everything.”*

*~ Alice Sebold, Lucky*

The word rape comes from the Latin *rapere*, which means to seize or take by force. It is basically the non-consensual, and often forced, use of the genitals of another person.

Merriam-Webster defines rape as "an unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent due to mental illness, mental deficiency, intoxication, unconsciousness or deception."<sup>i</sup>

The Supreme Court of India observed in *Nippun Saxena v. Union of India*<sup>ii</sup>, "Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female."

## Is rape a gender-neutral crime?

Contrary to the popular belief that only women can be raped, men can be raped too. The following data shows that not only women but men are also victims of sexual violence. It is estimated that approximately one in six men were sexually abused as children.<sup>iii</sup> According to WHO, world report on violence and health, between 5% to 10% of men throughout the world reported that they were sexually abused as a child<sup>iv</sup>. According to a report published by US statista research centre, in December 2020, around 52,336 cases of sexual violence against men were registered worldwide<sup>v</sup>. It is obvious that these numbers are far less than the real number of cases as due to the taboo attached to male victims of sexual violence, most males do not even report the sexual violence they suffered. Furthermore men and women are raped in prisons too. Men on men rape has also been documented as war rape i.e. rape is used as a weapon of terror in warfare<sup>vi</sup> according to the times “one in every 21 men had been forced to penetrate an acquaintance or a partner, usually a woman; had been the victim of an attempt to forced penetration; or had been made to receive oral sex.”<sup>vii</sup>

Female on male rape is another form of sexual violence which is ignored by the society at large. As penal penetration is considered as the only form of rape, it is believed that female on male rape is not a possibility. But that is in fact not the real truth. In 2008 a study was conducted in which 98 men were interviewed by the United States national crime victimization survey in which it was found that 46% of men who reported some form of sexual victimization were victimized by women.<sup>viii</sup>

### Legal definitions of rape;

Under Indian penal code<sup>ix</sup>, rape is defined under sec 375 as follows:

Sec 375- 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 to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- © manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Against her will or without her free consent.

So according to the definition of rape given under Sec 375 of IPC, rape is a crime that can be

committed solely against a woman by a man.

As defined under English law

Sec 1 of sexual offences Act 2003<sup>x</sup>, rape is a statutory offence which is created by a person (A) if (a) He intentionally penetrates the vagina, anus or mouth of another person with his penis, Without (B's) free consent. The 2003 legislation recognizes rape as a gender-neutral crime when it comes to the victims of rape but the perpetrator under English law is still believed to be a male when it comes to sexual crimes.

In US rape is defined by the US department of justice<sup>xi</sup> as, “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” This definition of 2012 makes rape a gender neutral crime. The previous definition from 1927 focused only on vaginal penetration, but the new definition also includes anal or oral penetration. Under Singapore's statutory definition of rape<sup>xii</sup>, which came into force on 1 January 2020, both men and women can be victims of rape, but only men can be charged with rape under Section 375 of the Penal Code. If the perpetrator is a woman, she will be charged with sexual assault with penetration in accordance with article 376 of the Penal Code.

Rape is a crime not only against women but also against men and other genders, and this has been recognized by many countries. India also needs to change the definition of rape to make it gender neutral. The world must recognize rape as a gender-neutral crime.

## **Effects of rape**

Rape is a crime that not only affects the victim physically, but also psychologically. Rape causes, in most cases, physical injuries, especially to the victim's genitals as a result of the use of force. Male victims are often threatened with weapons. A study by Stermac and colleagues found that 45% of male sexual assault victims who were admitted to hospital had suffered some form of physical injury<sup>xiii</sup>. Moreover, rape victims also suffer psychological effects. Most rape victims are prone to post-traumatic stress disorder<sup>xiv</sup>. Rape victims are also at risk of suicide, and this is not only the fault of the perpetrator, but also of our society and its sick mentality. These effects are possible in all rape victims, regardless of gender. It is actually stated that suicide rate among male victims of sexual violence is 14 to 15 times higher than suicide rate among female victims of sexual violence.<sup>xv</sup> The reason for this is toxic masculinity and the idea that a man who cannot avoid being

sexually assaulted is weak or not manly enough. The ridicule and the homophobia male rape victims have to go through are another reason for the high suicide statistics of the male rape victims. Since the consequences of the rape are the same regardless of gender; definitions, penalties and legislation must also apply to all victims, regardless of their gender.

## **Punishments for the offence of rape**

Rape is considered as one of the most heinous crimes and is severely punished in most countries. Rape robs the victim of his/her honour and dignity. It's an infringement of the victim's rights and liberty. The consequences of rape for victims are dire. This barbaric crime must be punished severely. Strict laws should be enacted and the existing laws should be enforced strictly to stop this cruelty. Penalties for rape vary by jurisdiction, but in most countries, penalties consist primarily of imprisonment, fines, and the death penalty. In some countries, punishment for rape can differ from maximum to minimum depending on the circumstances of the particular case. In most countries, only males are punished for committing rape because most people believe that rape can only be committed by men.

Countries such as Saudi Arabia, Afghanistan and North Korea impose the death penalty for rape<sup>xvi</sup>. In China, rapists are sentenced to death or castration<sup>xvii</sup>. In the United States, under the federal law the punishment for rape ranges from fines to life imprisonment. In some aggravating circumstances, such as when the rape victim is a child, death penalty may also be allowed. In Australia, United Kingdom and Canada, the maximum sentence for committing rape is life imprisonment, but the actual sentence is determined by the various mitigating and aggravating circumstances of each case. In France, the penalty for rape is 15 to 30 years in prison. In Indonesia, the maximum penalty for raping a woman is 12 years<sup>xviii</sup> whereas in the commentary by R. Soealio on paragraph 285 of Indonesian Penal Code it is stated that the law need not determine the punishment for a female perpetrator who forced a male to have intercourse with her as such action is deemed as not harmful or bad for male victims, such as in females like pregnancy.<sup>xix</sup>

### India

In India under sec 376 (1) of IPC<sup>xx</sup> punishment for the offense of rape is from 7 years of imprisonment to life imprisonment with fine.

Under Sec 376(2)<sup>xxi</sup> a person who is in the position of power over the victim like, a police officer or a public servant, committing the crime of rape can be punished for a term which may not be less

than 10 years but can extend up to life imprisonment, along with fine. Under this section a culprit who commits rape on a pregnant woman knowing her to be pregnant or commits rape on a woman under 12 years of age or commits gang rape is also punished with similar sentence.

Under Sec 376 B<sup>xxii</sup> the offence of custodial rape can be punished with imprisonment for a term of which may extend up to 5 years and shall also be liable to fine

Under sec 376 D<sup>xxiii</sup> offenders of gang rape are punished with imprisonment for a term of twenty years which can be extended to life imprisonment with fine.

Sec 377 Unnatural offences<sup>xxiv</sup>.—Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Previously Sec 377 punished for all the unnatural offences mentioned supra but in *Navtej Singh Johar vs Union of India*<sup>xxv</sup> the constitutional validity of Sec 377 IPC was challenged and on September 6, 2018 a five-judge bench of Supreme court partially struck down Sec 377 of IPC, decriminalizing same-sex relations as it violated Article 14,15,19 and 21 of the Indian constitution. Consequently now people of third gender can engage in consensual intercourse legally. The court upheld Sec 377 till the extent that it punishes sexual acts against animals.

#### Gender neutral laws in India

Under the “Protection of Children from Sexual Offences Act” (POSCO) sexual abuse committed against a child of any gender is punishable. Sec 2(d) under this Act defines “child” as any person below the age of 18 years.<sup>xxvi</sup>

The POSCO is the only legislation in India that includes gender-neutral punishment for the victims of sexual abuse. But it only includes victims aged under 18 years. Currently, there is no legislation for the adult male victims of sexual violence.

Article 14<sup>xxvii</sup> of the Indian Constitution provides for equality before the law and equal protection of the laws within the Indian territory. Further, article 15<sup>xxviii</sup> of the Indian Constitution forbids discrimination or bias on the basis of religion, race, caste, gender, or place of birth. The fact that only females get protection of law against sexual related crimes is discriminatory on the basis of gender.

The Supreme court of India in the case of *Sakhshi vs Union of India*<sup>xxix</sup> directed the Indian law commission to investigate the issue of gender-neutral rape laws. The law commission submitted its 172nd report<sup>xxx</sup> in March 25 of 2000 on “Review of Rape Laws” urging that the definition of rape should be amended to include all the genders and should provide protection to all.

In the case of *Priya Patel vs State of Madhya Pradesh and another*<sup>xxxi</sup> the Supreme Court ruled that a woman cannot be punished under Sec 376(2) for gang rape even when she facilitated the offence. In the present case the husband of the appellant raped the victim. While the victim was at the appellants home, Priya entered the room where her husband was raping the victim, the victim begged Priya for help but instead of helping the victim, Priya slapped her and then bolted the door of the room from outside. The trial court charged Priya for hurt u/s 323 IPC and for gang rape under section 376(2)(g) IPC along with her husband who was charged for gang rape too. Priya challenged the decision of trial court in MP High court but her appeal was dismissed by the honourable high court stating that a woman can be charged under sec 376 (2) for facilitating rape. Priya then challenged the order in the apex court of India. Allowing the appeal, the Supreme Court quashed the charges framed against the appellant. The bench held that “a woman cannot be said to have committed rape. The counsel for the appellant is right in her submission that she cannot be prosecuted for alleged commission of the offence punishable u/s 376(2)(g).”

Further, the bench stated its opinion by saying, “ a bare reading of section 375 of the IPC makes the position clear that rape can be committed only by a man.”

Justice Pasayat noted in the judgement that according to the explanation given u/s 376(2), “when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within the subsection. That cannot make a woman guilty of committing rape. This is conceptually inconceivable.”

## **Why this lack of legislation for male rape victims?**

The reason for there being almost no legislation for the protection of males against sexual violence is the belief of society that only women can be raped or sexually violated. Our patriarchal society holds the belief that since men are physically stronger and hold a dominating position, they cannot be the victims of sexual violence. Most men who are the victims of sexual violence do not even report the crime as the society criticise and make fun of the male victims, their sexuality is questioned and they are considered as weak. Another reason for this is that sexual violence against men is considered as a joke. Most people believe that since men enjoy sexual activities they cannot be raped, people think that even being in a non-consensual intercourse must be fun for men.

Recently a man in Jalandhar, Punjab was raped by 4 women<sup>xxxii</sup>, they kidnapped him and kept him hostage for 11 hours and during that time they repeatedly raped him after inducing him some drugs. Instead of taking this as a serious issue, posts on social media were mocking the incident, some posts applauded women while others posted how it must have been an enjoyable experience for the male victim. Not only on social media but even on TV shows and movies men's sexual assaults are treated as a joke and we laugh at them without realising that sexual violence against men is a real thing and not just a myth. It is as degrading, as humiliating and as hurtful for other genders too as much it is for women. It's the need of the hour that legislation for the protection of all genders be brought forward. Gender neutral laws should be made and implemented so that culprits of rape can be punished without any gender bias and this heinous crime can be curbed.

### **Some instances where offenders of male rapes were punished;**

In September 2013 a Chicago women was charged with armed robbery and sexual assault for raping a man at gunpoint.<sup>xxxiii</sup>

*Reynhard Sinaga* who is thought as the UK's most "prolific rapist" ever<sup>xxxiv</sup> and most probably the world's most prolific rapist preyed on young men for several years. He was caught in 2017, until then he had raped at least 190 men out of which 48 men appeared in court against him. He was found guilty for drugging, rapping and sexually assaulting all 48 of them. He would lure young men who were out partying at the neighbourhood night clubs to his flat. These men were typically in their late teens or in their 20's. His built was small and non intimidating which along with his cheerful smile worked in his favour. He was charged of 159 sex offences out of which 136 were rapes.

These cases show that men are as susceptible to sexual violence as women. Protection of men against sexual violence is need of the hour. Our world is changing day by day and not in a positive way.

## **What should be done?**

From all the above stats and prevailing legislation all over the world it is clear that passing new gender neutral laws for penalising rape and other forms of sexual violence is the pressing priority of the moment. Amendments should be made in the existing rape laws to make them gender-neutral so that all the victims of rape get justice regardless of their gender. Fast-track courts should be made for all genders like they exist for female rape survivors. National and State Commissions should be set up for men on the lines of existing commissions for women. Help for all the sexual

violence victims without any bias of gender should be available at all levels. Stigma against rape victims either men, women, 3rd gender or transgender should be stopped and instead we as a society should be there for the victims of these heinous crimes in every way possible. United Nations should also put efforts by organising conventions and enacting rules for protection of men against sexual crimes.

## Conclusion

Law and society go hand in hand, in our ever-changing world, laws need to be updated regularly. Outdated laws only help criminals in getting out scot free. With the increase in sexual violence crimes against men and transgender, we need to amend the existing gender specific laws and make them gender-neutral. New legislation to help the victims of sexual violence should be formed without assuming the gender of either the victim or the perpetrator. There have been numerous amendments in Indian law and these amendments have served as a boon for Indian society, so now new amendments should be made in sexual violence related laws too. Remedies should be included in our legislation to help the rape survivors. We as a society should be more sympathetic towards survivors of sexual violence regardless of their gender. Feminist groups should also recognize what is in front of them and should stop opposing the formation of gender-neutral rape laws. Moreover, we need to ingrain the importance of consent in future generations so that we can stop these crimes from happening and we can reduce the number of victims who have to go through such cruelty. Lastly, together we shall try to form a society where we live in harmony, where all humans are treated with love and respect regardless of their gender, colour, cast, nationality or religion.

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