



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CAMPARISON OF RAPE BETWEEN MEN AND WOMEN

AUTHORED BY - JIMI SONO

BBA. LLB 4th year

Abstract

that section 376 of IPC, 1860 should not be Generalized. The Indian constitution also provides the rights that every person should be treated equal Rape is the fourth most common crime in the world. Rape should not be genderlized. It can happen against both men as wells as the women but due to the society norms, women are weak which is the sole reason that women can't be a predators. On the other hand men are seen as aggressive.

In the Indian Penal Code 1860, Section 375 define Rape. Rape means unlawful sexual intercourse or any other penetration of the vagina, anus with force. There was a drastic amendment in 2013 in the rape law. According to section 375 men are seen as predators not women. In our constitution Article 14 says that right to equality which contradicts the section 375 which talks only about women being rape.

Societies believe that rape happens because women wear revealing clothes but the question occur do wear need to let animals wear clothes because there are cases were animals rape too. In every hour 86 rape cases are lodged against women. 1 out of 33 men have experienced sexual assault and 71% of men said they were abused. And 84%-90% did not talk about the abuse to anyone

Keywords: Men, Women, Rape, cases

Table content

- Introduction
- Scope
- What is Rape Culture and Why rape happened?
- Stages of rape trauma syndrome.
- Camparison on rape against men and women

- Gender Neutral laws vs constitution
- Leading case
- Research Question
- Research objective
- Conclusion
- Bibliography

Introduction

It is defined under section 375 of the Indian penal code 1860. There was an amendment in 2013 which was a drastic change. Rape means unlawful sexual intercourse or any other sexual penetration of the vagina, anus or mouth or another person, with or without force, by sex organ, other body part, or foreign object or manipulate any part of the woman to cause penetration. The consent of the person subjected to such penetration. Rape is the fourth most common crime in India. On average above 86 cases daily are registered. 49 offences are against men. Every 10 minutes a rape case is registered. In a case a rapist inserted a candle bottle to stop a girl's bleeding. Recently the viral video of Dalai Lama kissing a child and asking him to lick has captured the attention of the people. People have accused him of child abuse. After the video went viral he issued an apology statement to the boy and his family.

Scope

Since the late 20th century, the definition of rape has changed. The traditional definition was narrow. Rape was usually understood to be done by a man. As now it can be understood that a victim and a rapist both could be male or female and transgender. In 2012 the U.S. Department of Justice adopted a new definition of rape to be used in the FBI's uniform crime reporting program. Rape often occurs due to men treating women as an object and also the patriarchal system.

Statutory rape is the term which means intercourse with a person below the age of consent, where consent is no longer relevant. Statutory rape leaves long-term psychological and physical damage to a victim. The example for this can be seen during the period of abolition of apartheid, around two-fifths of South Africans were under the age of consent which is eighteen years. These rapes were committed because it was believed by them that sexual intercourse with a virgin (including the infant) could cure the rapist from HIV.

During the second war both the allied and Axis armies committed rape as a means of women. In the 1993, the United Nations (U.N) commission on Human Rights Council declare system rape and military sexual slavery

What is Rape Culture and why Rape happened

Only a few are aware of the meaning what is meant by Rape culture. Many of people haven't heard of rape culture and even if they do it seems confusing or seen through hypercritical lenses. Rape culture is a society where the assault is prevalent and normalized.

Prevalance: According to the rape abuse and incest national network one in six women will be victim to attempted or completed rape in their lifetime. For men, that figure is around Thirty three. By Rainn's estimates, An American is raped every 48 seconds. Sexual harassment, violence and assault are truly prevalent.

Normalization: In our society it is normalizes for example in books and bollywood movies shows that men are aggressive, sexually dominant and always want it and women on the other hand are submissive sexually, fragile and someone who doesn't want to engage in much sexual activity. This dichotomy of gender isn't just simplistic, it's actually problematic for which leads to create social pressure on a man to sexual conqueror, pursue women ,which is the one of the reason why man ignore consent. During the party ,the alcohol consumption can lead to sexual conquest which is normal for the society after all ,they say boys will be boys. And also because of all men abstain them from reporting sexual assault against them. They face mockery from society .when men talks about the sexual assault ,they break the society norms. Men preferred to say silent rather than reporting and talk about those incident because it might labeled them as victim and weak men in the society.

Women on the other hand are seen as someone who doesn't urge to have sex more often. And the women wanting are labeled as slut and also the women who are dressed inappropriately according to them are seen as women asking for it, which is why consent doesn't make sense to them.

According to 2020 report, nearly 77 rape cases are reported in India. Rape is not something that is confined to women but to men also. A male teacher rape his male student in India. Moreover, even the animal are being raped for instance a 55 year old man arrest for raping cow in Madhya Pradesh. An group of eight men in Haryana raped a pregnant goat.

Reason why rape happen

1. Society believe that women wearing revealing clothes are asking for it. Every man gets tempted and they believe nobody rape without consent and it is a part of society
2. Around 2.4 Lakh cases related to rape and posco pending
3. Men likely to brag and boast their sexual encounter equating them with conquest
4. Certain myth that a women never say "NO"
5. Law in India says that within 60 days, the verdict for the rape should be pronounce
6. Many convicted or potential rapist think that rape is equal to sex. Also marital rape is not considered as rape
7. 94th offender are known to victim
8. Most of the cases are not registered because women face victim shaming
9. Sex education is need to make people aware and differentiate between porn and sex. Trash enjoy introduced sex education where during the process they realized that mostly people are mostly below 30 age who are not much inform about sex. sex in porn are seen as aggressive which affect and influence them to see sex as violence act

Stages of victim trauma

Rape trauma syndrome or RTS is related to post traumatic stress disorder but more specific to sexual assault. It has nothing to do with age. When a rape victim is dalit , it not only effected the victim as persons but the whole community goes through it.

The symtoms of RTS could be

- Rape victim may experience recurrent nightmare about the rape.
- Not involving in social activities
- Victim refrain to recall any feeling or thought

The stages of RTS are Actual stage

- Obsession to wash or clean themselves
- Confusion about everyday life
- Unorganised thought

Outward Adjustment Stage: During this stage, the victim may outwardly appear to have moved on from assault, but this stage is marked by serious inner turmoil. Victim refuses to discuss the incident. Some common symptoms during this phase include

- Poor include
- Sense of helplessness
- Panic attack

Underground stage

- Seems to returns to theirs lives as normal
- Have difficulty in concentrating and some depression
- Not wanting to talk about assault

Reorganization: In this victim may feel surprise, fear and return of assault. some phobias often included

- Fear of being in crowd
- Fear of being touched

Unless the institution of law doesn't come forward to create a safe Environment women cannot overcome it.

Camparison on Rape against men and women

Rape against men

Kerela High court held that section 376 is not a gender neutral provision. If a women tricks a man under false promise marriage .She cannot be prosecuted for the same offence what kind of law is this?. Does it not violate our fundamental rights. It should be gender neutral .Some stigma of society norms which doesn't allows them to report are

1. Women can't be perpetrators because they are fragile
2. Men are too strong to be subdued
3. Victim are usually weak people
4. Due to women centric, definition of rape law and ignorance in case of men, crime against latter is continously rising and victim doesn't get justice
5. A 17 years old student was inserted an iron in his rectum in Ghaziabad, case was registered only in section 377 of IPC only.

6. National Human Rights Commission has observed that sexual abuse is one of the primary reasons why inmates commit suicide
7. Men can be rape too by women and men both
8. Transgender are also the victim

Others countries making rape gender neutral

- Scotland redefined their rape law
- Northern Ireland also amended rape laws to replace the earlier term, non-consensual intercourse by a person
- Department of united states also changes from person to women

Gender neutral laws vs constitution

According to the survey 71% of men are said to sexually abused .84% -91% have not told anyone. Mostly parents are ashamed to report the case. During the childhood ,most boys were abused by their senior in the boys hostel.

Even there are case women raping women which is hard to accept but that the truth we have to look at it.

Moreover we should neutralized sexual abuse. In the patriarchy society women are cage and men are continued to be abused without anyone have a information about it. In most cases the predators are known to the victim. Society pays less attention to men and the shame attached to it. The 172nd Law commission India in March 2000 recommended that rape laws in India should be gender – neutral to protect male victims also. Advocate Sanjiv Kumar filed A PIL at the Delhi High Court. There are provision for sexual abused for male child then why not for the adult.

Rape define under Indian penal code 1860

Section 375 of IPC defines Rape:-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 other person.
- 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

- c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part 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 woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:-

Firstly- against her will

Secondly- without her consent

Thirdly- with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly- with her consent, when the man knows that he is not her husband and that her consent is given because she believes that that he is another man to whom she is or believes that he is another man to whom she is or believes herself to be lawfully married

Fifthly- 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 wholesome substance, she is unable to understand the nature and consequences of that to which she gives consent

Sixthly –with or without her consent, when she is under the age of eighteen years of age

Seventhly –when she is unable to communicate consent.

Explanation 1- For the purpose of this “vagina” shall also include labia major

Explanation 2- Consent means a unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

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 fifteen years of age is not rape

Under the Indian Constitution, Article 14 states equality before the law: The states shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 (1) The states shall not discriminate against any citizen on grounds only of religion, race caste, sex, place, sex, place of birth or any of them.

Criminal law amendment Bill 2019:

In parliament: law needs to be balanced has been disturbed. All the sexual offender should be gender neutralized .Men, women and other genders can be perpetrators and also victim of these offence .Men ,women and others need to be protected(S.K Tulsi July2019).

Advocate Sanjiv Kumar filed a PIL challenging the constitutionality of the rape case under the Indian Penal Code (IPC). He stated that

“Gender neutrality is a simple recognition of reality- men sometimes fall victim to the same or at least very similar acts to those suffered by women..Male rape is far too prevalent to be termed as an anomaly or a freak incident. By not having gender – neutral rape laws, we are not denying a lot more men justice than is commonly thought.”

Leading cases:

- 1) Nirbhaya Rape case: on 16 ,2012 Nirbhaya and her male friends had just finished watching “life of pi” which later change their life forever. She was brutally rape and thrown off the bus along with her friend. Mohammed Afroz inserted iron rod into her privates parts after raping her, which cause internal injury and she died. On 13th March 2014, Delhi High court gave its verdict in the cases with reference to Ram Singh vs ORS, the death penalty was imposed on four convicts by Delhi high court. The Delhi High court found each of the defendants are guilty of rape, murder, unnatural offences and destruction of evidence. The Criminal law (amendment) Act 2013 was passed after the Nirbhaya case. The Act amended several provision of Indian Penal Code ,Indian Evidence Act, and the criminal procedure code.
- 2) 2019 Hyderabad raped case: A veterinarian was raped and killed by four men in Hyderabad. on Dec 6 ,2019, they were killed on encountered under a bridge on Bangalore Hyderabad highway.
- 3) Unao Rape case: On, the 4th day of June 2017, a minor was gang raped by BJP Jaideep alias Atul Singh, and others. The family filed an FIR under section 363 and 366 of IPC, but the police officer refuse to do so, but advice them to compromise as he was the BJP MLA. So the family of the victim has to move to court for the justice. In 2018 victim father confronted the alleged BJP MLA, but he was thrashed mercilessly later on the days of 9th died due to injuries sustained by him during the custody On 12th April 2018 Kuldeep Sengar was arrested. Finally on 20th December MLA Sengar was convicted and the court awarded him a sentence of

imprisonment for life under section 376(2) of IPC and also an amount of Rs.10 lakh be paid as composition.

- 4) Hathras Gangrape case: On sep 14 2022 19 years old girls was gang raped and murdered in Hathras district of Uttar Pradesh, after 15 days she was cremated immediately on the death night without the consent of the family members. The SC/ST court in Hathras on Thursdays acquitted three out of four accused person. It was alleged that fourth youths belongs to dominating communities. The convicted Sandeep Sisodia was sentenced to life imprisonment by the court after founding him guilty under section 304 of IPC and fine of 50,000. The victim family approach the Allahabad High Court against the verdict.
- 5) Kathua rape case: On 10th Jan eight year muslim girls was abducted and gang rape by priest and his son and nephew inside the temple.it was believed that due to the tension of Hindu – Muslim. On 17th January her dead body was found between those periods she was raped repetitive and also given sedatives to fulfill they needs .And then they tried to kill her by her bare hand by choking her neck, which fails ,then they use a cloth to strangulated her body but when they realized she was still alive they smashed her head, the rapist were supported by two BJP MLA and also the Bar association of Jammu .The incident turned political drama. The three accused Tilak Raj, Anand Dutta and Surender Verma were sentenced to five years of imprisonment. The court acquitted Sanji Ram's son ,Vishal due to lack of evidence .The eight accused ,Sanji Ram's juvenile nephew ,was tried at a juvenile court.

Research question?

1. Why raped happened? How to overcome it?
2. How a gender neutral law can help the victim to get justice?
3. Why there is stigma that a man can only be prepators not a victims?
4. Why the society blamed women clothing for being raped? Even if so the why are animals raped, do we need to dressed up them?
5. There's less talk about men being raped and also women being raped by women? Why is it so.
6. How can we as a society can help a victim overcome the trauma that she/he has been through due to that rape incident?

7. Should the books, magazine, movies be more carefully censored, with the objective that they doesn't promote unhealthy sex?

Research objective:

Being law student has always been inquisitive about the facts why the society have the stigma of accepting that man are rape too. The laws in India under POSCO Act punished any offence done to a male child then why there are no gender -neutral for men? .Moreover the man that are vocally says that they were abused sexually are bashed and shame. They objective of this research is to understand

- The shame that male victim face being a victim
- How to decrease the statistic number of rape victim irrespective of gender.
- To under the psychology of both victim and the rapist

Conclusion

Through the research I personally that rape is a very sensitive topic which is not confined only to a particular gender. There's a need of amendment in the Indian law. During the course of research I perceive that some men are not aware with the fact that they were sexually abused once, moreover they feels that's it a vague topic to discuss because to them men are superior and stronger. And few have admitted it not a easy topic that can be brought around the table. while researches realized that women are being raped too which sound unusual. It was an arduous for me to find leading case on rape against men. It's high time that we need to bust the myth that man cannot be raped. According to survey around 71% men are raped and around 84% don't report it. They are countries that have reform they law so I feel as a law student feelsnd there should not be any discrimination on the basis of religion, caste, sex and place of birth.

Bibliography

- <https://www.dailyo.in/variety/rape-laws-sexual-assault-section-377-sodomy-men-victims-of-rape-asia-argento-rahul-raj-singh-metoo-27360>
- <https://blog.ipleaders.in/critical-analysis-of-rape-of-male-in-india/>
- <https://www.eou.edu/student-affairs/sex-matters/rape-trauma-syndrome/>
- <https://www.eou.edu/student-affairs/sex-matters/rape-trauma-syndrome/>