



## **Male Rape: An Unpalatable Reality**

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### **Abstract**

*Rape is a crime that strikes at a person's dignity and honour. India has experienced several rape incidents that have risen to the level of a national crisis, prompting many citizens to demonstrate their support for tighter rape laws and more deterrent forms of punishment. The rape of males, on the other hand, receives little attention from either the general public or the government. Male rape is one of those crimes that seem implausible to many, if not all, of us to comprehend. There is no particular legal definition of "Male Rape" in any municipal statute. According to the manner in which such events take place, it can be defined as the act of forcing a man to have carnal or sexual relations in the absence of his consent, whether by another man or a woman. Because there is no official definition for this crime, it is significantly underreported throughout the country.*

*Consequently, the author has made an attempt via the article to attract attention to the crime of male rape and its existence. In order to achieve the paper's goals, the author has defined what the crime is and cast light on the concealed, but not entirely invisible, gender bias in the relevant laws. It's also crucial to understand why society won't acknowledge the truth that a man may be raped and the challenges he would experience as a consequence. The author suggests several modifications to the country's legislation that, if put into effect, would provide enough legal and moral assistance for both male rape victims and their families.*

Keywords: Male Rape, Gender-Neutral Law, Violence, Indian Penal Code.

### **Introduction**

While 'violence against women' dominates the conversation, it is essential to remember that men are also victims of violence and abuse. 'Violence against men' is a common phrase for acts of violence performed against men. Assaults on males, whether committed by women or men, have increased significantly over the years but have primarily gone underreported due to the societal assumption that women are always blameless in these situations. Daily, men are subjected to a wide range of forms of violence, including assaults that are not only physical but also mental, emotional, sexual, and financial.

In any given society, sex crimes against men are not treated the same as crimes against women. Men have always been regarded as being mentally and physically robust, unflappable, and

endowed with a rugged demeanor. Furthermore, “Rape” is a word that is closely associated with women as the subject matter and their honor.

This misunderstanding has been carried over into modern times as well. In India, specific crimes, such as stalking, insulting a woman’s modesty, rape, gang rape, and so on, are examples of how men are omitted from being considered victims of certain crimes.

Rape is defined as “unlawful sexual activity, and sexual intercourse performed forcibly or under potential threat of harm against a person’s will or with a person under a certain age or incapable of valid consent due to mental illness, mental deficiency, intoxication, unconsciousness, or deception.”<sup>1</sup> However, like India’s, several nations’ laws define rape as the forced insertion of the penis or any other object into a female’s vagina, anus, or oral cavity.

As the definition above suggests, and as any man of common sense can see, most countries consider males as the only potential perpetrator and females as the only potential victim in cases of rape. It is not a secret that males have a dominant position during sexual intercourse, and as a result, they are perceived to be the ones who can have sex at their leisure, and no woman can force them to do so. Many other perceptions are associated with this thought, which will be discussed further in the paper. The societal orthodoxy regarding sex, and men’s desire for sex, has not changed since it was established. Wherever there has been an idea to transform and nullify it, the so-called “Feminists” have stood, implicitly, against this and tried to resist it.

### **RAPE: A GENDER-SPECIFIC CRIME**

Rape is considered a gender-specific offense in India, and only a minute percentage of the population believes that females are capable of perpetrating the act themselves. There are two primary elements responsible for this: first, society, which believes that a male can never be pushed or pressured by a woman into having non-consensual intercourse with her; and second, a legal requirement in the state of residence. Indian Penal Code, 1860 Section 375 states that rape is committed when a male engages in sexual intercourse with a female.

As per this provision, any individual who goes against the order of nature and has non-consensual carnal or sexual intercourse with any person who is either of the same gender or someone other than humans, animals as mentioned, is liable for a punishment of imprisonment either for life or for any other term as the court may deem fit. Though this section provides for a man being raped by another man, it nowhere mentions that a man being forced to penetrate by a woman may be classified as an offense of rape, just because sex between a man and a woman is considered ‘natural.’

### **Dilemma Of Males**

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<sup>1</sup> Anne L. Barstow, Rape, Britannica, <https://www.britannica.com/topic/rape-crime>

Rape is a gender-specific crime in the eyes of the general public and the law in some countries, as previously stated. There are various reasons for this idea, none of which can be refuted by men and none of which can be generalized to all. It also appears to be impossible because males are biologically the strongest of all the genders in human civilization. For example, men's physical power has always been greater than women. Thus, it is absurd for society to conceive that a man can be forced to have sexual intercourse with a woman.

Some of these masculine dilemmas are described in greater depth below:

- i. **MEN CAN NEVER REFUSE TO HAVE SEX** - No one in society can ever believe, conveniently, that a man can deny any woman's proposed sex at any time. This belief is prevalent in society because it believes that males are easily sexually aroused and will fall for sex given any slight opportunity. Furthermore, men are raised in society, particularly in Indian society, with a sense of 'manliness,' which creates the impression among them that if they ever resist sex, they may no longer be treated as a 'man.' This perception implies that if a man has sex, it is with his consent and not without it.
- ii. **NO MAN CAN BE FORCED TO HAVE SEX** - 'Men' is the strongest of the genders and are thought to be the ones who handle, or should handle, the external affairs in the social institution of the family, as well as being the only breadwinner in the family. A man in Indian society has hardly been a part of household management or the culinary aspect of living because he is thought to have such strength that is required for dealing with the pressures of the outside world. This faith in society and the way we are raised leads us to believe the same. Given these beliefs about a man's strength, such a society would never believe that a man could be forced to have sex with someone. In the same manner, Vrinda Grover, a renowned lawyer, researcher, and activist stated, "There are no cases of women raping men. Men, in my opinion, do not face the same level of sexual violence as women. Consider the heinousness and ferocity of sexual violence against women."<sup>2</sup> Furthermore, a man is biologically stronger than a woman, which strengthens the preceding belief. Furthermore, we fail to recognize that the man may be coerced through blackmail, intoxication, pressure, or the use of authority.
- iii. **'MANLINESS'**- This is an internal battle that every man must wage against himself. A man is raised to believe that no problem in the world can break him and that he is able to overcome any unusual situation that he may face. Another idea implanted in all men as they grow up is that a man never cries over his problems. It is taught that man must be strong enough not to cry about his problems and should keep striving to solve them on his own. These thoughts lead a man to believe that he is invincible and that there is no situation that he cannot face alone. This is one of the reasons for the underreporting of male rape

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<sup>2</sup> Himanshi Dhawan, Government plans to make rape law gender neutral, Jan 20, 2012, The Times of India, [http://timesofindia.indiatimes.com/articleshow/11558285.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/11558285.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

cases. The ‘man’ cannot express his grief because he fears he will lose his ‘manliness’ in society and will never be able to call himself a ‘man’ again.

- iv. **TREATMENT OF A MALE RAPE VICTIM** - When reporting a rape, male victims are more reluctant than female victims to come forward. The handling of a male victim is one of many causes of this. Authorities are shocked by the incident and begin to question the sexual orientation of the suspect. Katie Silver mentions one of the participants in Dr. Weare’s research who said that while reporting the crime to the police officer, the officer made a remark saying, “You must have enjoyed it, or you’d have reported it sooner,” while discussing the research paper of Dr. Siobhan Weare, Lancaster University Law School, who carried out the first empirical research into forced penetration in the UK in 2016-17<sup>3</sup>. Another participant stated, “We’re afraid to talk about it because we’re ashamed, and when we do, we’re not believed because we’re men.”<sup>4</sup> It’s hard to believe that a man can be raped.

### Can “It” Really Happen?

Society may be destabilized in various ways by the topic of law. Therefore, we need to know whether the idea we are discussing is indeed possible.

In well-known research published by Dr. Siobhan Weare of Lancaster University Law School titled “Forced-to-Penetrate Cases: Lived Experiences of Men,” it was discovered that many respondents to her survey admitted to being victims of rape and specifically ‘forced to penetrate’ by female perpetrators. 200 people completed the survey, then analyzed it from various angles. When asked about the strategies used by female perpetrators to commit such an offense, nearly 22% of respondents said it was a case of “telling lies, 9 threatening to end the relationship, threatening to spread rumors.....”<sup>5</sup>

Furthermore, two fellow researchers in the United States conducted a study on how there has been substantial growth in the number of cases where females were observed to be abusers.

The researchers studied central data provided by the Bureau of Justice Statistics and the Centers for Disease Control and Prevention, which allowed them to determine the frequency with which women were sexually molested. According to the data, which many of us may find impossible, 79% of males who were “forced to penetrate” reported female offenders.<sup>6</sup>

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<sup>3</sup> Katie Silver, Forced penetration: If a woman forces a man to have sex, is that rape?, 25 July 2019, BBC News, [Forced penetration: If a woman forces a man to have sex, is that rape? - BBC News](#)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Lara Stemple, Ilan H. Meyer, Sexual Victimization by Women Is More Common Than Previously Known, Scientific American, October 10, 2017, [Sexual Victimization by Women Is More Common Than Previously Known - Scientific American](#)

Even though it may not seem convenient that a woman can rape a man, we must understand that when we talk about it, we rarely consider the physical coercion that is involved; instead, we must consider the mental coercion that is faced, with additional consideration given to how the general public has become hypersensitive towards women in general. This hypersensitivity is harmful because any statement made by a woman is assumed to be accurate, and verification of facts is rarely demanded. Considering the data above, we may infer, “It is possible!”

### **The Criminal Law Amendment Act, 2013**

The Delhi gang-rape case resulted in substantial amendments to the Indian Penal Code’s rape definition. ‘Rape’ was enlarged to encompass penile-vaginal penetration and oral and anal penetration, and the insertion of any instrument into a woman’s vagina, urethra, or anus. The Act, unlike the Ordinance, does not make the offense gender-neutral. As a result, only a man can rape a woman.

Rape is defined in Section 375<sup>7</sup> of the Indian Penal Code, which constitutes the majority of Indian criminal law. According to the Supreme Court, “a bare reading of Section 375 clarifies that a man can only commit rape.”<sup>8</sup> It went on to say that “a woman cannot be said to have the intention to commit rape.”<sup>9</sup> The primary component of this highly gender-specific definition is sexual intercourse with a woman against her will or without her permission.<sup>10</sup> Forced oral sex, sodomy, or penetration by foreign objects fall outside the scope of this definition and are punishable under Section 377 of the IPC, which deals with carnal intercourse against the order of nature, and Section

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<sup>7</sup> Section 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
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any 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, 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 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 unwholesome 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 eighteen years of age.

Seventhly. —When she is unable to communicate consent.

<sup>8</sup> State of Rajasthan v. Hemraj, 2009 (12) SCC 403

<sup>9</sup> *Id.*

<sup>10</sup> THE INDIAN PENAL CODE, NO. 45 OF 1860, Section 375.

354, which deals with insulting a woman's modesty.<sup>11</sup> However, neither of the proviso criminalizes instances of sexual assault on men by women, which has been determined to be significant in light of new research.

The Supreme Court, noting the shortcomings in the definition of rape, referred the case to the Law Commission of India for consideration.<sup>12</sup>

In its comprehensive report on the "Review of Rape Laws," the Law Commission proposed extensive changes to the meaning of "rape."<sup>13</sup> Recognizing that young boys are increasingly being subjected to forced sexual assaults and taking into account the suggestions of various stakeholders, it attempted to make the rape law gender-neutral, heavily borrowing from Western Australia's Criminal Law.<sup>14</sup> The Indian Penal Code has been heavily amended. It was proposed that the definition of rape in Section 375 be replaced with one of 'Sexual Assault,' which would be wide enough to include instances of male rape, digital rape, etc. On December 4, 2012, the Government of India introduced the Criminal Law (Amendment) Bill, 2012 in Parliament, taking cues from this report.<sup>15</sup> The need for such amendments was especially pressing in the wake of recent findings made by various branches of the judiciary. Consider the comments made by Dr. Kamini Lau, an Additional Sessions Judge in the case of *State v. Prahlad*<sup>16</sup> advised the Legislature to "*have a re-look at the definition of Rape to specifically include the instances of Digital Rape/ Male Rape/ Anal Rape and make the offense Gender Neutral or to formulate a separate exhaustive legislation covering all categories of a sexual assault similar to the Legislations that exist in Scotland, Ireland, Australia, Victoria (Sexual Assault Act) and the United States.*"<sup>17</sup>

With the Criminal Law (Amendment) Ordinance, 2013, significant progress was achieved. The Central Government promulgated the Ordinance in response to the recommendation of the "Committee on Amendments to Criminal Law," which was formed in the aftermath of the infamous Delhi Rape Case in December 2012. The Ordinance rightfully suppressed the provisions of the Indian Penal Code insofar as it made rape a gender-neutral offense by stating that a "male" could be held liable for rape, thereby changing the Indian Penal Code, which states that only men are capable of performing rape. Take, for example, Pinky Pramanik's case.<sup>18</sup> They were arrested on suspicion of raping a coworker but were eventually released because medical evidence about /her gender was inconclusive. The problem was that if Pinky was certified as a woman, she could not be prosecuted under S. 375 because the law states that only men can commit rape. In addition,

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<sup>11</sup> *Sakshi v. Union of India*, 2004 (5) Sc 518.

<sup>12</sup> *Id.*

<sup>13</sup> Law Commission of India, 172<sup>nd</sup> Report on Review of Rape Laws (March 2000).

<sup>14</sup> *Id.*

<sup>15</sup> *The Criminal Law (Amendment) Bill, 2012*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/billtrack/thecriminal-law-amendment-act-2012-2552/>.

<sup>16</sup> *State v. Prahlad*, Session Case No. 49/11, FIR No. 155/11 PS Keshav Puram 55 (Jan. 17, 2012).

<sup>17</sup> *Id.*

<sup>18</sup> *Pinky Pramanik v. State of West Bengal*, MANU/WB/0640/2014.



there are numerous unreported cases of women engaging in sexual aggression against men. Given our society's strong patriarchal structure, these offenses go unreported in the absence of a well-defined law. The critical requirement at the moment is to enact effective legislation, maybe in line with the Ordinance, to guarantee that all rape survivors, regardless of gender, obtain justice and that all rapists, regardless of gender, face punishment.<sup>19</sup>

Male rape is rarely addressed in India. Unfortunately, there is no solid legal framework to assist male rape survivors. Male rape survivors are not included in Section 375 of the Indian Penal Code. If a male attacker molests him, a male victim can only hope for justice through Section 377, the country's controversial anti-sodomy law.

Under Sections 375 and 376 of the Indian Penal Code, only a male may be convicted of rape, and the victim must be a woman. Furthermore, the laws governing stalking<sup>20</sup>, voyeurism<sup>21</sup>, and sexual harassment<sup>22</sup> are gender-specific, meaning the perpetrator can only be a man and the victim can only be a woman. However, because the word used is 'Whoever,' the law relating to pouring acid is gender-neutral.<sup>23</sup>

In its 172nd report, the Law Commission of India recommended that rape laws be gender-neutral.<sup>24</sup> It is contended that the principles of equality before the law and equal protection of rights entrenched in our Constitution as fundamental rights must also be applied to this situation.<sup>25</sup>

### **Presumption as to rape Under Sec. 114A, Indian Evidence Act, 1872**

The principle of presumption of innocence, which states that an accused should be considered innocent unless and until proven guilty, is perhaps the most fundamental aspect of natural justice in criminal law. It is regarded as crucial because it is presumed that letting the guilty go free is preferable to convicting the innocent.<sup>26</sup> The opposite rule, a presumption of guilt, places an unreasonable burden on the accused, requiring him to prove his innocence or be convicted. Reverse onus burdens were subsequently integrated into the Indian Penal Code, 1860, for rape and dowry death offenses.<sup>27</sup> Section 114A<sup>28</sup> of the Indian Evidence Act of 1872, as amended, has shifted the

<sup>19</sup> Abhishek Mour & Vivek Jain, *Male Rape: Problem, Scope and Solutions*, SACJ (2014) Vol 1.1,

<http://sacjnujs.in/files/Male%20Rape%20-%20Problem,%20Solutions.pdf>.

<sup>20</sup> The Criminal Law Amendment Act, 2013, Section 354D.

<sup>21</sup> The Criminal Law Amendment Act, 2013, Section 354C.

<sup>22</sup> The Criminal Law Amendment Act, 2013, Section 354A.

<sup>23</sup> The Criminal Law Amendment Act, 2013, Section 326.

<sup>24</sup> F. Agnes, Law, *Ideology and Female Sexuality: gender neutrality in rape law*, Economic and Political Weekly, 37(9) 844, 844-847, (March 2, 2002).

<sup>25</sup> *Id.*

<sup>26</sup> Juhi Gupta, *Interpretation of Reverse Onus Clauses*, 5 NUJS L.REV. 49 (2012), <http://nujlawreview.org/wp-content/uploads/2015/02/juhi-gupta.pdf>.

<sup>27</sup> INDIAN PENAL CODE, 1860, Sec. 114A (Presumption as to rape) and Sec. 113B (Presumption as to dowry death) (introduced on the recommendations of the 84th and 91st Law Commission Reports respectively).

<sup>28</sup> Sec. 114 A. Presumption as to absence of consent in certain prosecutions for rape- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) or section 376 of the

presumption of innocence to that of guilt if the woman testifies in her evidence that she did not consent to the rape. Again, considering that people in positions of power can dominate only women and no other identities is erroneous.

### **Other aspects of Rape Laws:**

- i. Male who engages in sexual activity against the will of a female - There are no guidelines for demonstrating a woman's will in this case. Although she may have engaged in consensual sex, she maintains her innocence and accuses him of rape with a vengeful attitude.
- ii. IPC 376B/C/D – Public workers and higher-ups who seduce a woman under their authority and have sexual relations with her are subject to imprisonment. When women ask for sexual favors from males, there is no such punishment in the law. Males are also not protected against false and frivolous allegations of women with malice.
- iii. If a man has sexual relations with a woman after promising her marriage, he is unable to end the relationship with the lady. If he does, he is considered a rapist in India, according to the country's legal system. It's okay to switch the genders, and if a girl does the same thing, it'll be referred to as "women empowerment."
- iv. Males are not required to give consent until they reach the age of majority. If a 16-year-old boy and a girl of the same age have consenting sexual relations, the boy will be prosecuted with rape!

Gender-neutral rape legislation in India is critically needed, as seen by the statistics presented above, which demonstrate the significance and urgency of the issue.

### **Conclusion & Suggestions**

It is frequently stated that a man cannot be forced to have sex or that making rape laws gender-neutral will cause enormous problems for the Judicial system to try the cases of rape and will make women more highly susceptible.<sup>29</sup>

According to statistics, there are many cases of male rapes, and in the majority of cases, a female perpetrator was involved. As a result, the government must recognize that even if there is a remote possibility of a crime occurring, there must be a law to address it. However, at this point, the country must also enact gender-neutral legislation to protect male rape victims.

Following a thorough examination of the subject and some personal observations, the authors would like to propose that:

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Indian Penal Code, (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

<sup>29</sup> *Supra* note 14



### 1. GENDER NEUTRALITY IN LAWS MUST BE PROMOTED -

Notwithstanding the Criminal Law Amendment Act of 2013, the country's rape laws are gender-specific, with a gender assigned to the perpetrator's and victim's faces. Furthermore, the law failed to be gender-neutral and thus indirectly targeted a segment of society. With the suggestions of the Justice Verma Committee and according to the Constitutional Principles of the land, the government shall strive to create gender-neutral laws and thus provide a reasonable opportunity to all. Sanjiv Kumar, a social activist, filed a Writ Petition<sup>30</sup> before the Hon'ble High Court of Delhi seeking gender neutrality in rape legislation.

### 2. GENDER SPECIFICITY IN LAWS SHALL BE OUTLAWED -

In its preamble, the Indian Constitution provides for equality to ensure equality among the country's citizens in terms of status and opportunity. Gender-specific legislation, on the other hand, has violated this. Not only that, but a gender-specific law denies many constitutional rights guaranteed to citizens of the 25 countries. The rape statute, which solely specifies males as perpetrators and does not identify any circumstances in which a woman is involved as a perpetrator, has violated Article 15<sup>31</sup> of the Constitution. In addition, by not providing for a male raped by a female, equality before the law<sup>32</sup> is denied, either directly or indirectly.

### 3. VIOLATION OF SOCIETAL ORTHODOXY -

The law is intended to maintain social control and penalize those who commit a socially inappropriate crime. Most of the time, the law provides for a society based on societal standards and is thus dependent on societal norms. Male rapes are a socio-legal issue that both society and the law must address. It is understandable given that when the Justice Verma Committee proposed the presence of gender-neutral laws in the country and the Criminal Law Amendment Bill, 2013 was drafted in that regard, society was the one who forced the government to back down and remove the provision making rape laws gender-neutral from the bill. This demonstrates that citizens' thought processes must be changed before the law is changed to make them think that male rape is a crime that can occur and that a woman can be a perpetrator.

It is clear that the majority of respondents believe that a woman can commit rape and force a man to have sex through physical force, intoxication, or any other coercive means. As a result, it is clear that the paradigm is shifting, but the government must work on this issue in order to become a catalyst for the movement for gender equality in the crime of rape.

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<sup>30</sup> Writ Petition (Civil) No. 8745 OF 2017

<sup>31</sup> The Constitution of India, Art. 15.

<sup>32</sup> The Constitution of India, Art. 14.