
ENHANCING LEGAL PROTECTIONS: TOWARDS COMPREHENSIVE RAPE LAWS FOR MEN EMPHASIZING THE FORENSIC AND MEDICO-LEGAL IMPROVEMENTS

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ABSTRACT

Throughout history, entrenched laws have frequently been used to uphold and justify misconceptions surrounding rape. These misconceptions have serious repercussions, creating a climate of silence and disbelief for victims especially those who don't conform to typical expectations despite the long-lasting effects of sexual abuse. The inconsistent reporting of sexual assault perpetrated against men is a multifaceted issue stemming from deeply embedded societal prejudices and inadequacies within the legal system, which frequently render them devoid of appropriate avenues for seeking justice. This research paper addresses the critical requirement that current legal frameworks be modified to properly handle cases involving male victims of sexual assault, including rape. The 3 pivotal areas of focus for the proposed amendments are legal definitions, procedural protections, and forensic and medico-legal procedures. The authors' conscience in tackling such a delicate subject supported by social stigma informs these amendments in addition to the rulings in international instances of nations that have passed gender-neutral rape legislation. In order to ensure that men are specifically protected by applicable rape laws, the study first recommends defining legal terms clearly and broadly. Second, the research paper supports the necessity for specific procedural changes to guarantee male victims' protection to stop gender discrimination and guarantee equitable and reasonable treatment. Finally, the study highlights the necessity of better forensic and medico-legal methods to successfully protect men's rights. This entails creating protocols for obtaining evidence and evaluating private data in cases involving male victims and guaranteeing access to assistance and healthcare services that promote gender equality. According to the research study as a whole, the suggested improvements are essential to promoting justice, equity, and men's dignity in the criminal justice system. These changes have the potential to significantly improve the lives of those impacted by criminal cases by filling up existing legal gaps and safeguarding the rights and welfare of those involved.

INTRODUCTION

Sexual abuse is a widespread problem that impacts people of all genders, yet the legal frameworks addressing it often fail to provide adequate protection for male victims. Male rape is often considered a taboo subject in society, carrying a stigma especially among heterosexual men. Instances of male rape are typically interpreted within the framework of traditional notions of manhood and masculinity. As a result, the majority of victims were afraid to disclose their experiences of sexual assault. Usually, their concern is that if they disclose the assault, people would question their sexual orientation, call them gay, or even think less of a man. Because thousands of male victims were compelled by this terror to conceal and deny their abuse, thousands of rape incidents remain unreported, leading to a paucity of information about them.¹ Rape is a serious worldwide issue and the fourth most common crime in India. Most of the time, it is assumed that men commit rapes against women, but have we ever considered the opposite? Rape was a crime committed only by men against women in the past, but as time went on, society underwent numerous changes. Rape can affect people of any age, gender, or sexual orientation. However, in order to eradicate such horrible crimes, good law and order must be upheld and people must be made aware of them.² First of all, we have to accept the fact that the victim and perpetrator of a rape can be done to males also and considering the experiences of male forced-to-penetrate victims, we have made the conscious decision to focus on men who are compelled to penetrate women and are also forced to penetrate other males, as well as in cases of male-to-male rape. With a focus on strengthening forensic and medico-legal components, this research paper explores the necessity for comprehensive rape legislation that are expressly designed to protect men in order to close this gap. Although there is a growing awareness of male rape, the identification and acceptance of male victims is frequently hampered by societal preconceptions and misconceptions. The inadequate legal frameworks, which are largely intended to assist female victims of sexual abuse, further exacerbate this marginalization. Because of this, it can be difficult for male survivors to get justice and support services, which makes it harder for them to get over the trauma of being raped. An important area that needs work is how forensic and medico-legal authorities handle cases of male rape. Many times, current procedures are not designed to address the particularities of male sexual assault, such gathering and preserving evidence. The paper improving these legal system components is crucial for prosecuting criminals as well as recognizing male survivors' stories

¹ <https://ccs.in/indias-law-should-recognise-men-can-be-raped-too>

² <https://legalvidhiya.com/should-rape-laws-be-gender-neutral/>

and guaranteeing they get the justice and support they are due. This research study makes the case for the adoption of comprehensive anti-rape laws that especially recognize and address the needs of male victims. These regulations should include a wide range of actions, including the development of support networks tailored to the needs of male survivors, specialized training for law enforcement and medical staff, and the inclusion of male victims in legal definitions. By bolstering legal protections and improving the forensic and medico-legal response to male rape, progress could be made in ensuring fairness and equal treatment for all individuals who have experienced sexual assault.

Rape Legislations for Men in Different Countries

Of the 96 countries investigated, 63 had laws against rape or sexual assault that were written in a gender-neutral manner, 27 had laws that were strictly gender-specific, meaning that the victim was always a woman and the perpetrator was always a man, and 6 had laws that were partially gender-neutral, meaning that the victim could be either a man or a woman.³

The UK modified the rape legislation to include "both non-consensual anal and vaginal penile penetration" and remove "buggery" in the "Criminal Justice and Public Order Act, 1994." An effort was made for the first time to recognize male rape in the United Kingdom judicial system with this legislation. Afterwards, the vague definition of indecent assault was removed, and it was further defined to include non-consensual penetration of the mouth as part of the "**Sexual Offences Act, 2003 (England and Wales)**"⁴. Nonetheless, penile penetration is still required for the definition of rape. The UK's rape laws are still not gender-free because the present definition prohibits women from being charged for raping men.⁵

Rape laws in Scotland underwent significant modifications after the "**Sexual Offences (Scotland) Act, 2009**" and were reinterpreted as:

"Intentional or careless penetration of another person's mouth, anus, or vagina (to whatever extent) without that person's consent or a reasonable suspicion that consent was acquired".

³ This content is written by analyzing the penal code of each country. However there were countries excluded due to inaccessibility of criminal codes.

⁴ Sexual Offences Act, 2003 (England and Wales) is the first law particularly addressing sexual offences in the UK.

⁵https://www.researchgate.net/publication/317729028_The_scope_of_male_rape_A_selective_review_of_research_policy_and_practice

In order to include male victims, the word "women" has been replaced with "person" in this description. Similarly, the rape laws in Northern Ireland have been amended to include recognition for male rape. The term "non-consensual intercourse by a man" was deleted from the previous interpretation of rape and replaced with "non-consensual intercourse by a person" under the "**Criminal Justice (Northern Ireland) Order, 2003**" in order to ensure that justice is granted to male victims of rape and shape the law gender neutral. Oral rape was also defined under the "**Sexual Offences (Northern Ireland) Order, 2008**".⁶ Both common law countries and civil law countries such as the United States and Canada have strived to shape their rape laws more impartial, expanding their scope to include men. Rape is not just defined as women being raped by men; it encompasses victims and perpetrators of all genders. In addition, non-consensual penile penetration is no longer considered as serious or upsetting in US law as the law sees rape have a specific object. The United States was the first country to consider object penetration to be rape and to equate it with penile penetration, unlike other countries where the two are considered separate crimes. In an effort to further gender-neutralize the rape laws, the Canadian government has taken a step forward. In 1983, "**Bill C-127**" was enacted by the Canadian legislature, which abolished the crime of rape and created 3 categories of sexual assault. Following US law, Canadian law also acknowledges that penetration with an object constitutes rape, even though penile penetration is not a sufficient basis for the crime.⁷ Even if the rates of rape and other sexual offenses have decreased in various nations, some continue to view rape as a crime specific to a particular gender, such as Pakistan and India.

In the Philippines, before the 1997 revision of the "Revised Penal Code of 1930," male rape victims did not have legal recognition. However, the 1997 amendment expanded the definition of rape in Article 266-A to include any form of sexual assault, such as the insertion of genitalia or objects into the mouth, anal, or genital orifice of another person, regardless of the victim's gender. This change acknowledged male rape victims and allowed for legal action against perpetrators who assaulted males, committed by both males and females. However, there is a discrepancy in penalties for raping boys compared to girls. Raping boys is classified as rape by sexual assault, punishable by six to 12 years in prison, while rape against girls is punishable by life imprisonment.

⁶ *Id*

⁷ *Id*

Indian Laws and Male Sexual Assault

Rape in India is specified as the introduction of a foreign object, such as a penis, without the consent of a woman or girl. into her vagina Section 375⁸ of the IPC refers to rape as

“Sexual relationships with a woman who is under the age of eighteen and who has had sexual relations with her against her will, without her agreement, by compulsion, deception, or fraud, or who has been inebriated, tricked, or mentally unstable”.

When we examine the term, we discover that it draws two obvious but nuanced conclusions -

- The perpetrator of rape is always a man.
- A rape victim is always a woman.

As result, the definition as a whole exclusively addresses the rape of women; male rape is not covered. It is evident that there is no specific legislation in India regarding the rape of a male by some other male or a female by a male. The maximum penalty for them would be sodomization under the Buggery Act, 1533 modeled section 377⁹ of the IPC, which defines unnatural sex as a "Act against god." All other laws and sections are exclusively intended for females, with the exception of this one. The unequal treatment of male and female rapes has an impact on our constitution's equality of genders. Although the POCSO ("Protection of Children from Sexual Offences") covers male child sexual assault¹⁰ it does not cover male adult sexual assault. There is no logical reasoning to treat instances of sexual assault on male children differently from those involving similar acts against male adults. Why can't we have a comparable provision for males if we have one for the rape of male children? The underlying concept is that men are viewed as being invulnerable and as using their position of authority to take advantage of women in India. However, if we consider the real scenario as presented by the 1500 males surveyed in the Insia Dariwala survey, which revealed that 71% of them had been abused, 84.9% of them said they had not told anybody about the assault. Shame (55.6%) was the primary reason of this, followed by guilt (28.7%), fear (43.5%), and perplexity (50.9%).¹¹ Instances of male sexual assault and rape have been prevalent in India since the

⁸ Sec 375, Indian Penal Code 1860.

⁹ Sec 377, Indian Penal Code 1860.

¹⁰ <https://www.indiatoday.in/india/story/bill-to-make-sexual-crimes-gender-neutral-introduced-in-parliament-1568504-2019-07-13>

¹¹ <https://www.theguardian.com/global-development/2018/may/23/indian-study-male-sexual-abuse-film-maker-insia-dariwala>

legal definition of rape is limited to the insertion of a penis or object in the vagina. However, due to a lack of legislation, these crimes have gone unpunished. For example, on June 16, 2018, a boy in his 20s in Ghaziabad was sexually assaulted by five men, and an anonymous object was inserted into his rectum. Since our laws do not recognize these kinds of crimes, the case was filed under section 377 of the Indian Penal Code. In the same way, there are numerous instances of sexual assault against males in the military forces. The fundamental problem with the absence of laws shielding men from sexual assault is that the constitution is flawed. In terms of Article 14¹², "no person within the territory of India shall be denied equality before the law or equal protection of the laws." Furthermore, Article 15¹³ forbids the state from treating any individual unfairly on the basis of their religion, race, caste, sex, place of birth, or any combination of these. Moreover, nothing in this article shall preclude the State from making special measures for women and children in accordance with Article 15 clause 3. Currently, there are just two statutes that recognize that males can also experience sexual assault:

- The "Protection of Children from Sexual Offences" (POSCO) is the first and deals with sexual abuse of both male and female children.
- The 2nd is the UGC "Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal) 2013¹⁴," which acknowledges that men and women experience similar levels of sexual harassment in the workplace.
- The need for stronger rape laws in India was sparked by the absence of laws intended for males.

Shreds of Evidence and Statistical Data

Beyond the documented experiences of women around the world, there is also a significant issue of sexual violence against men, especially in the military and the prisons. The data on sexual violence of men is often lost as it goes unreported due to various concerning factors. Male rape victims rarely turn to the legal, medical, or mental health systems for assistance due to concerns of shame, humiliation and self-blame. In many cultures, the sexual abuse of males by women is a common but little-reported practice. Older women have abused young men sexually in the majority of cases. A telephone-based study, the National Intimate Partner and

¹² Article 14, Constitution of India 1950

¹³ Article 15, Constitution of India 1950

¹⁴ Sexual Harassment of Women at Workplace Act (Prevention, Prohibition and Redressal) 2013 was derived from the Vishaka guidelines. These guidelines were laid down after the landmark judgment of Vishakha and others v State of Rajasthan.

Sexual Violence Survey¹⁵ (2010) sought to determine how common sexual and other forms of violence are among adult men in the United States. There have been notable changes from prior years in the latest 2018 data on sexual violence against men in the US. Higher rates of reported rape, cases of being made to penetrate someone else, and unwanted sexual contact among men seem to indicate an apparent increase in the prevalence of sexual assault. These results point to a concerning pattern of guys being more susceptible to sexual assault. Furthermore, there has been an increase in the percentage of male victims reporting victimization before the age of 18, even if the majority of them still suffered their first victimization before turning 25. These modifications demonstrate how sexual assault against males is changing and emphasize how crucial it is to continue putting comprehensive preventative and intervention strategies into place.

In light of the paucity of data regarding male rape in India, 222 men participated in a study. 16.1% of the respondents reported having been coerced or forced into sex as an adult by a woman. 2.1% reported having been coerced or forced into sex as an adult by a man (Vipra, 2013). Renowned Dr. Sudhir Gupta the head of the forensics department at AIIMS in his recent interview reveals that he had witnessed over 10-20 male rape victims in the last 3-4 years. He contends that male rape is prevalent within the armed forces and prison environments.

Proving the Non-Consensual Act

Seventeenth-century jurist Sir Matthew Hale's notorious comment on rape stated that "it is an accusation easily to be made and hard to be proved, and harder yet to be defended by the party accused, though never so innocent."¹⁶

Between April 2005 and April 2015, Save India Family Foundation¹⁷ and My Nation Foundation¹⁸, conducted a survey amongst 1,00,000 men over the internet. 27.5% of men were affected by emotional violence and 20.4% of men were affected by sexual violence. Despite a

¹⁵ The National Center for Injury Prevention and Control is responsible for conducting the National Intimate Partner and Sexual Violence Survey.

¹⁶ Elizabeth Kolsky, "The Body Evidencing the Crime": Rape on Trial in Colonial India, 1860-1947, 22 *GENDER & HISTORY*, 111 (2010) https://www.researchgate.net/publication/229448954_The_Body_Evidencing_the_Crime'_Rape_on_Trial_in_Colonial_India_1860-1947.

¹⁷ An Indian organization advocating for men's rights is registered, not financially supported, operates as a non-profit, and is not affiliated with the government. It collaborates with several like-minded NGOs within India. It was started in 2005

¹⁸ An Indian non-profit organization to support the group of victims of dowry law, legal terrorism and gender biased laws

significant number of male sexual assault victims in India, seeking justice remains a hurdle. To prove a rape case there are various pieces of evidence which should be produced in the court. The crucial aspect of this is the victim's testimony. Though it is extremely important, to avoid false accusations the court seeks both corroborating evidence and physical evidence to prove the act. In contrast to rape cases involving penile-vaginal penetration, instances of male sexual assault may present less readily available physical evidence. The evidence which could track down the perpetrator could be divided into forensic and non-forensic evidence. Forensic evidence provides a stronger base while the non-forensic supports the human element in the crime.

The Forensic Evidence -

Despite the gravity of rape, numerous instances in India remain undisclosed for extended periods, often spanning months or even years. This makes it more difficult to get the victim to provide the forensic evidence. Forensic evidence serves as a direct link between the perpetrator and the crime, particularly when cases are reported within 72 hours of the incident. Before the 2005 Amendment to the Criminal Procedure Code (CrPC), Indian criminal law did not particularly address the use of science, forensics, and DNA evidence in criminal investigations, posing challenges for law enforcement agencies. However, the 2005 Amendment introduced DNA profiling into the code, enabling the collection of DNA samples from both victims and suspects under the supervision of a medical professional. DNA profiling involves comparing forensic evidence collected from the victim or the crime scene to identify the perpetrator. Bloodstains are crucial for DNA analysis, whether they are found on the offender, the victim, or the crime scene. Techniques such as ABO group analysis and serum antigen testing can aid in identification, and DNA matching can also be performed using tissues or blood from pregnant women or aborted fetuses. Saliva, which often contains epithelial cells left behind after activities such as kissing, sucking, or biting, is another valuable source of DNA evidence. To preserve potential evidence, victims should refrain from washing areas where oral fluid residue may be present, a precaution that investigating officers must ensure. Additionally, forensic examination may extend to include items such as cigarette butts, cans, bottles, and the victim's clothing. Semen, frequently exchanged during sexual activity, serves as a significant forensic indicator because it fluoresces under UV light. It comprises spermatozoa within seminal fluid. Although the presence of spermatozoa in oral, anorectal, and vaginal cavities decreases over time following sexual contact, semen stains on clothing can persist for extended

durations, facilitating detection. However, the examination of semen necessitates thorough scrutiny due to the potential for misleading outcomes, especially in instances involving vasectomized or azoospermic perpetrators.

The list of the specimens which should be collected from the victim including:-

- Victim's clothing containing body fluids which were secreted during the act.
- Body fluids including blood, semen, and saliva.
- Evidence on the body including the hair, pubic hair, photographs of any physical marks of resistance and nails.
- To collect the fluids at the opening of the body, Penile swab, Urethral swab, anal or rectal swab and oral swab must be taken.

After the judgment of “K.S. Puttaswamy v. Union of India¹⁹” the “Right to Privacy” is recognized as a fundamental right. Article 20(3) provides the Right against Self- Incrimination which protects an accused person from providing evidence against him or evidence which can make him guilty²⁰. Hence, it is extremely important to obtain the consent of the person from whom the specimens are collected. Specimens contain genetic information (DNA) which gives out the details of both the victim and the perpetrator.

In 2014, the World Health Organization issued guidelines for collecting forensic evidence, which are crucial for legal proceedings in cases of sexual violence. These protocols and guidelines are essential for developing the quality of care and offering guidance on gathering forensic evidence. They emphasize the need for comprehensive and sensitive healthcare services tailored to the needs of survivors, aiding them in coping with the physical and psychological consequences of sexual violence. While primarily focused on the care of women and children, the guidelines also address issues relevant to male victims of sexual assault. In India, the Central Forensic Science Laboratory, established under the Directorate of Forensic Science, recently introduced guidelines for Forensic Medical Examination in Sexual Assault cases. Although these guidelines are primarily geared towards females, they could serve as a foundation for developing guidelines for male victims. These guidelines not only provide how

¹⁹ AIR 2017 SC 4161

²⁰ Article 20(3), Constitution of India 1950

the specimens must be collected but also crucial information on how the victim of sexual assault must be treated and how the personal information of the victim should not be leaked.

The Non-forensic Evidence -

The non-forensic evidence mainly includes the victim's testimony along with the witness's testimony if present. This lays down the facts of the case, which are corroborated by the forensic data. Evidence at the scene of the crime, such as digital exchanges between the accused and victim, physical documents, recordings, and surveillance film, may exist and be very important in figuring out the details of the case. The audio-visual section of the forensic laboratory, which assists in the reconstruction of crime scenes and analyzes security footage and other recordings, and the digital forensic center, which looks at data from laptops and mobile devices, are the two options available for determining the authenticity of non-forensic evidence.

Alternative Procedure

Criminal profiling is a trustworthy method of establishing the crime because of the passage of time or other circumstances that could call into question the veracity of forensic evidence. A legal investigation technique called criminal profiling, also known as offender profiling, is used to identify individuals based on their psyche and behavioral tendencies. This is predicated on the notion that the crime scene discloses the perpetrator's mental state. When someone commits a crime frequently, they typically have a go-to strategy for carrying out the crime in the majority of the cases. This is known as a criminal signature or *modus operandi*. In the world, there are 2 standardized techniques for criminal profiling. The first one is the top-down approach while the second is the bottom-up approach. The top-down approach was introduced by the Federal Bureau of Investigation (US). Under this method, the criminal profilers segregate the offenders into two divisions- the organized and the unorganized. This procedure consists of four primary stages: data integration, crime scene categorization, crime recreation, and profile generation. The bottom-down approach is the evidence-based approach using the statistical data obtained from the crime scene. It is psychologically based. The process involves the perpetrator's interaction with the victim, the significance of time and location, the method of committing the crime, the offender's criminal history, and the extent of forensic knowledge. In India, there is no specific framework for criminal profiling. However, the Central Bureau of Investigation and some forensic science institutes have made efforts to provide training and conduct

programs for law enforcement to learn about criminal profiling. Despite limited acceptance, criminal profiling could become more reliable with adequate training and the establishment of a dedicated framework. It serves as a convenient method for narrowing down suspects and expediting the investigative process.

CONCLUSION

This research paper concludes by underscoring the urgent need for legal reform to safeguard male victims of rape. The current legal framework often disregards or diminishes their experiences, leaving them without recourse or assistance. This study advocates for a more comprehensive and efficient strategy to combat sexual assault by advocating for laws addressing complete rape tailored to the needs of male victims, integrating advancements in forensic and medical-legal fields, and integrating criminal profiling. Inclusive rape laws must acknowledge the unique hurdles faced by male victims, including societal stigma and stereotypes. Advances in the forensic and medical-legal realms are imperative to ensure precise and sensitive handling of evidence, particularly for male victims who may encounter skepticism or disbelief. Enhancements such as these can also aid in apprehending perpetrators and securing successful convictions. The introduction of DNA profiling and the establishment of guidelines for forensic examinations are pivotal steps in ensuring a more empathetic and thorough approach to evidence collection. Nevertheless, there remains an urgent requirement for gender-aware protocols that honor male survivors' rights to confidentiality and respect during legal proceedings, acknowledging their specific challenges. The judicial system can witness a significant benefit from the application of criminal profiling in investigations and prosecutions. By recognizing the characteristics and behaviors of offenders, law enforcement officers can substantiate and apprehend criminals more efficiently, potentially averting future crimes through targeted interventions. In summary this study focuses on the importance of adopting a holistic approach to address sexual assault against men. Enhancing the prognosis for male victims necessitates the implementation of legal reforms, utilization of criminal profiling, and advancements in forensic and medical-legal research. Upholding the protection and support of all survivors, regardless of gender, must be prioritized to ensure a fair and equitable judicial system for all individuals.

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