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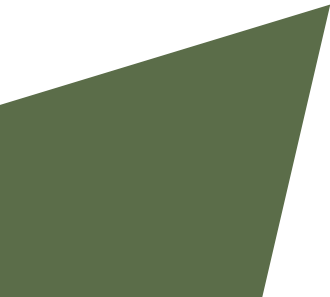
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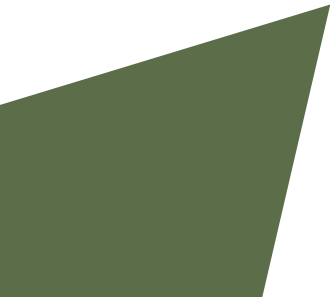
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**The Gender of Rape in India**

**Aryan Mehta**

Rape, a crime that takes away everything from a woman, sometimes more. We live in a country where every day we hear about vile men raping women. We cringe when we hear about these atrocities, we protest, we lash out. What about when the men are not the perpetrators but the victims? How many cases of rape crimes committed against men have we heard of? This is a crime unheard of because it is legally impossible for a woman or any gender to rape a man in India. They are exempted from this atrocious crime even if their act comprises what would be rape had a man done it. Due to this, there is no legal documentation of men being raped because the crime does not exist. There is hardly any, if any, legal recourse for victims of rape where the crime has been committed against males. The first reason for this is that the current status of the Indian laws on the subject is that they are not gender-neutral. Another reason is the social stigma that surrounds such cases due to its challenging the societal idea of masculinity that has been established and upheld throughout the country's history.

The lack of gender neutrality is reflected by the fact that section 375 of the Indian Penal Code (1860) (hereby referred to as the IPC) states that: "A man is said to commit rape if he-..."<sup>1</sup> which eliminates the possibilities of the persecution of perpetrators of another gender. In addition, the section also classifies the insertion of any object into the urethra or the anus of a woman as rape. This is where the lack of gender neutrality of the Indian law may be questioned. If a person inserts an object or a body part into the urethra or the anus of a man that would not legally be considered as rape and the victim would have to enforce section 350, 352 of the IPC that deals with the use of criminal force on an individual and the punishments for the same respectively. The difference in the penalization between section 352 and section 376, which deals with punishment for rape is vast. Section 352 allows for a maximum imprisonment of 3 months and/or a fine of Rupees 500. However, punishments under section 376 range between a minimum of 10 years of imprisonment (post the Criminal Law (Amendment) Ordinance 2018) to life imprisonment along with a fine. The fact that the gender of the victim of the same crime results in enforcement of two different sections that penalize to such varying scales demonstrates a clear violation of Article 14 of the Indian Constitution (1950) which expressly prohibits discrimination based on sex in the eyes of the law. This bias was brought into light by the 172<sup>nd</sup> report of the Law Commission of India titled "Review of Rape Laws" in March of 2000<sup>2</sup>. Its objective was to substitute the definition of 'rape' with the definition of 'sexual assault' to make it gender-neutral. This would have neutralized the gender of the perpetrator not only expanding the scope beyond male but also the gender binary

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<sup>1</sup> S. 375, The Indian Penal Code 1860.

<sup>2</sup> 172<sup>nd</sup> Law Commission of India Report, *Review of Rape Laws*, 2000, 19, available at <https://www.legal-tools.org/doc/1c639d/pdf/>, last seen on 8/6/2020.

that currently exists in most statutes. However, none of their recommendations have been applied to the statute.

Another instance of rape is when consent for sexual intercourse is obtained through putting the victim or any person in whom she is interested, in fear of death or hurt or while giving consent, because of unsoundness of mind or involuntary intoxication or when she is under 18 years of age or when she is unable to communicate consent<sup>3</sup>, all of which can occur with a male being the victim as well. However, the law fails to consider cases where men are forced to penetrate by obtaining their consent through these very methods of coercion. In doing so they are, again, limiting the crime to only male perpetrators even though there are multiple instances of the same. Women in positions of power physically, emotionally, or professionally are capable of coercing men into having sexual intercourse. “A 2013 survey conducted in India by the Centre for Civil Society asked 222 men if they had been coerced into sex by a woman of which 36 answered in the affirmative”<sup>4</sup>. This clearly shows the existence of cases that would classify as rape had the perpetrators been male. However, due to the lack of gender neutrality of the Indian rape laws, there exist no remedies for such victims under the aforementioned law. As mentioned by a classified sub-inspector at the Hauz Khas Police Station, New Delhi “We know of rape cases. But even if a man walks into the police station saying he has been raped by a woman, we cannot file a case”<sup>5</sup>.

Another reason we hardly see any cases of male rape coming forward is the social stigma that surrounds such cases. They challenge the delusional idea of masculinity that dictates that a man must always be strong and domineering and could never succumb to a woman. Ironically, this leads to men being too afraid to report these crimes. They fear that word would spread and “log kya kahenge?”. As said in “No Penis, No Problem”:

“Society is, after all, dominated by unwritten scripts that tell males and females how to behave sexually and how to respond to stress or fear, and these schemas tend to illuminate acts of male perpetration and female victimization while keeping underground the existence of female-perpetrated abuse and male victimization”<sup>6</sup>.

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<sup>3</sup> S. 375(d) (iii)(v)(vi)(vii), The Indian Penal Code, 1860.

<sup>4</sup> Jai Vipra, *A Case for Gender Neutral Rape Laws in India*, 10, Working Paper Number 286, Centre for Civil Society (2013).

<sup>5</sup> Ibid, at 14.

<sup>6</sup> Kay L. Levine, *No Penis, No Problem*, 33, Fordham Urban Law Journal, 357, 357 (2005).



Levine talks about the gender norms that dictate how each individual from the gender binary responds sexually. He highlights how society seems to focus only on acts of male perpetrators and female victims and in doing so suppresses the reality of females being perpetrators and men being the victims. These “schemas” have been embedded into the mindset of multiple generations which makes it very difficult for them to accept the latter and hence disregards it as something that does not exist. But it does, and when cases do occur men are too afraid that they will be socially shunned or mocked resulting in them not opening up about these instances.

Another social norm that surrounds men is that they always want sex. Hartwick, Desmarais, and Hennig state that:

“For men, endorsing the traditional sexual stereotype may lead to feelings of guilt when they are reluctant to engage in sexual activity, as they believe average men are always amenable to any sexual opportunity.”<sup>7</sup>

In an attempt to uphold this stereotype, men may subconsciously find it difficult to offer resistance as they may feel guilty about doing so. The lack of social support for rejecting such advances may add to the pressure to succumb. The possible lack of ability to reject sexual advances may make men more susceptible to be coerced into engaging in sex. Societal pressure then does not allow them to claim non-consensual sex, resulting in no case for rape being brought up.

There seems to be no acceptance or acknowledgment about the fact that men can be raped by other genders as well. This is reinforced by the fact that there are barely any online portals offering help to male victims in India. In other countries such as the UK, there exist online portals such as “MensAid”, “Hitting Home” and “MenWeb” that have pages for helping male victims. However, in India, similar portals such as Society for Nutrition, Education & Health Action (SNEHA), they all assume that the victim is a female. This shows a gendered notion of rape in society and the absence of widespread acceptance of such a crime against men. An attempt to gender neutralize the law was made in 2018 when a Public Interest Litigation (PIL) by the Criminal Justice Society of India was filed before the Supreme Court and another PIL recently filed in June 2019 in the Delhi High Court. Both PILs have been rejected due to the Center’s intervention.

The Central Government firmly opposed the decision to make laws on rape gender-neutral, "keeping in mind that victims of sexual harassment in India are predominantly women, and

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<sup>7</sup> Cailey Hartwick et al, *Characteristics of Male and Female Victims Of Sexual Coercion*, 16 no.1/2, Canadian Journal of Human Sexuality, 31, 31 (2007).

the perpetrators mostly men”<sup>8</sup>. However, basing the law on the “predominant” cases results in the absence remedy for cases that fall outside the scope of what happens in most cases. Based on the information available, whilst, arguably, women face the majority brunt of this crime, it should not deprive other genders from legal recourse in the unfortunate instance that they are victims of such a crime.

It may also be argued that even though male rape does not come under Sexual Harassment in the IPC, remedies do exist for victims under the section defining Criminal Force, namely section 350. However, given that rape is a crime against humanity, its penalty should be uniform irrespective of the victim's gender as the alternative would be against the principle of equality before the law<sup>9</sup>. As aforementioned, the punishment for the convicted varies greatly between sections 352 and 376 and so does the sense of justice.

Another counterclaim is that male rapists would use gender neutrality as their defense by claiming that the victim is, in fact, the rapist. However, such counter accusations including, but not limited to, consensual sex and fabricated allegations are factual and will be tackled through due process of law and judicial proceedings. The fear of law being misused should not deter the law and its desired result from being in existence. Any accusation would need proof and presenting those for a false accusation risk committing the crimes of submitting false statements to the police, submitting false evidence, and perjury.

Critics also argue that men are not as severely affected by rape as women as they do not face the same amount of social stigma, backlash, and alienation as women do. This is entwined with the idea that men likely do not mind non-consensual sex and that even if they are subject to it, society does not judge them. This thought process is highly problematic for a progressive society where mental health is increasingly gaining its long-overdue recognition and does not differentiate on grounds of gender. An interview with 40 male rape victims showed that long term effects for men included depression, anxiety, increased feelings of anger and vulnerability, loss of self-image, emotional distancing, self-blame, and self-harming behaviors<sup>10</sup>. It would be safer to say that the

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<sup>8</sup> Pallavi Pundir, *Indian Rape Laws Cannot Be Gender Neutral, Says Government*, VICE, available at [https://www.vice.com/en\\_in/article/mb8dey/rape-laws-in-india-cannot-be-gender-neutral-says-ministry-of-home-affairs](https://www.vice.com/en_in/article/mb8dey/rape-laws-in-india-cannot-be-gender-neutral-says-ministry-of-home-affairs), last seen on 8/6/2020.

<sup>9</sup> Art. 14, the Constitution of India, 1950.

<sup>10</sup> Jayne Walker et al, *Effects Of Rape On Men: A Descriptive Analysis*, 34 no.1, Archives of Sexual Behaviour, 34, 69-80 (2005).

effects, short term, and long term, may vary for each person irrespective of their gender. Also, determining the gravity of the crime in light of its consequences may be highly controversial as this would imply that the rape of a virgin and a prostitute vary in severity, an argument that has no legal standing.

Applying gender neutrality to the law would mean neutralizing the gender aspect of the crime, widening the scope of both, potential perpetrators and victims. This would not only provide a holistic approach towards the crime but also widen the ambit of what the law entails and whom it protects. The opportunity cost of doing this is very little as this does not affect the original law as cases currently considered as rape will still fall within this amended law. Gender neutralizing the law will break the walls of the gender binary in the country resulting in legal relief for many more people than it currently does. Hence, section 375 and other corresponding sections of the IPC must be amended to accept the possibility of perpetrators of the crime in addition to men and victims other than women which would allow legal recourse for victims of all genders and as cases would come up, the idea of rape would expand beyond female victims and in time it would be acknowledged by society, dwindling the social stigma that surrounds it. It would be a giant step in the direction of the inclusion and acceptance of all genders.