



Laws concerning rape of both men and women. What distinguishes them from each other.

Manas Rajdeep

Student of Law

B.A LL. B(H) Amity University, Lucknow

Introduction.

Rape is the fourth most common serious crime in India and can happen to anyone regardless of gender, age, or sexuality. According to Krishna Iyer, A rapist robs a victim of their autonomy over their sexuality and physical integrity, which destroys the victim's soul. Gender theory argues that individuals actively shape their own gender identity and can embody various masculinities and femininities. Allard, Cooper, Hildebrand & Wetlands assert that individuals are active in selecting dimensions of gender rather than being passively shaped by societal forces. The United Nations General Assembly's Resolution 48/104 declares violence against women as a violation of human rights and Article 7 of the Rome Statute considers rape an offense against humanity.

The National Crime Bureau's report for 2020 revealed an average daily count of 87 rape cases with approximately 4–5 lakh cases per year.¹ Traditionally, societal norms have blamed victims instead of perpetrators for these crimes, but recent incidents have shown violence reported on men as well. This article will focus on outlining rape laws for protecting both women and men from violence. Laws related to sexual offenses like rape in India have evolved over time to reflect changes in social norms, legal principles, and human rights considerations through amendments made since its enactment in 1860 under the Indian Penal Code. The legal framework encompasses male as well as female victims, but historical factors influence how these cases are treated differently based on cultural perception.

In India, there exists a comprehensive legal framework that governs sexual offenses, including rape. The primary legislation addressing rape is the Indian Penal Code, which was established in 1860 and has since been modified to reflect societal changes and address gaps in legal protection. Revisions to the laws on rape have been substantial, particularly following the Nirbhaya case in 2012, which sparked widespread national outrage and demands for stronger measures against sexual violence.

Recently, there has been an increase in crimes against women and specifically an uptick in incidents of rape. Rape isn't just a physical assault - it often shatters the entire identity of the victim. While a murderer destroys the victim's physical body, a rapist

¹ <https://frontline.thehindu.com/news/crime-in-india-2022-ncrb-report-over-445000-crimes-against-women-in-2022-one-every-51-minutes-murders-juvenile-crimes-uapa-offences-against-state-uttar-pradesh-delhi-kolkata-kerala/article67607146.ecepijjo>

destroys the soul of their helpless target. Therefore, the courts bear significant responsibility when handling cases involving charges of rape." – Justice Arjit Pasayat²

Throughout history, women have endured acts of violation such as rape. Evaluating statistics from National Crime Bureau Records reveals that almost 75% of women do not feel secure within their own homes. Moreover over 96% rapes committed are by individuals known to victims. According to reports issued by WHO, a woman is raped every four minutes in India, and according to Centre for Development of Women's Studies; 42 women are raped every thirty-five Minutes³. Hence, in accordance with provisions laid down under Indian Penal code many legislatures have been implemented top reserve people from being raped and to combat perpetrators offensive actions. The legislation includes: -

(First) — Against her will.

(Second) — 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 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, she is unable to understand the nature and consequences of that to which she gives consent, because of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance.

(Sixthly) — When she is under sixteen years of age, with or without her consent. Explanation— Penetration is sufficient to constitute the sexual intercourse necessary for the offense of rape.

(Exception) — Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape.] This section starts with the word 'a man is said to commit rape', thus making it clear that the crime of rape is not a gender-neutral crime. Therefore, according to the definition of rape, only a woman can be a victim of a crime, and men can be perpetrators.

Men's rights in India:

India is a common-law nation with diverse customs, multiple religious communities, and a centuries-old history. While women in India are protected by various laws and have the right to report any violations of their rights, men do not receive similar explicit mention or protections under the law. Gender neutrality is strongly emphasized in legal frameworks because societal norms tend to perpetuate the view of women as victims due to prevalent patriarchy. Despite advancements in women's empowerment and feminism, progress towards gender-neutral laws has been hindered. Recent efforts such as public interest litigations filed in High Courts and the Supreme Court aim to make rape laws gender neutral. In 2017, Sanjiv Kumar questioned existing rape laws at the Delhi High Court on grounds that they only considered men as

² Punjab v Gurmit Singh & Ors.in 1996.

³ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

perpetrators; calling for a shift "beyond the male-on-female paradigm." The Law Commission recommended replacing "rape" with "sexual assault" to achieve greater gender neutrality. The government showed willingness for legislation after the Nirbhaya incident but faced criticism from feminist groups which resulted in maintaining gender-specific definitions due to prevailing patriarchal influences.

Historical background: -

Rape has historically been used as a tool for asserting power and dominance, most notably targeting women and girls across different societies reflecting deep-seated gender inequalities shaped by patriarchal norms. It has also been employed as a weapon during times of conflict with aimed assaults against females serving purposes beyond physical harm alone including terrorizing communities while establishing domination. Despite complexities associated with its historical evolution spanning through ancient societies where focus was placed on implications for victim's family or community rather than centering around human rights violations, we must recognize that societal perceptions concerning this crime continue evolving constantly over time.

A case of female rape

- Nirbhaya Case (2012)⁴: Nirbhaya's gang rape and brutal assault of a young woman in Delhi on December 16, 2012. One of the most infamous cases of female rape in India, the victim, who was later identified as Jyoti Singh Pandey, was brutally assaulted on a bus by six men, leading to widespread outrage. Jyoti succumbed to injuries a few days later, leading to calls for more stringent laws and better women's safety measures.
- Bilkis Bano Case (2002)⁵: Bilkis Bano, a Muslim woman, was gang-raped during the Gujarat riots in 2002. This case has attracted national and international attention because of the brutal nature of the crime and allegations of police involvement. Bilkis Bano has fought for justice for many years, resulting in the conviction of perpetrators and police officers.
- Kathua Rape Case (2018)⁶: An eight-year-old girl from a nomadic Muslim community was abducted, raped, and murdered in Kathua, Jammu, and Kashmir, India's Ministry of Human Rights and Human Rights Commission The case gained widespread media coverage and sparked outrage over the handling of the investigation, as some groups rallied in support of the accused, leading to protests and debates about communal tensions and justice for the victim.
- Unnao Rape Case (2017): A teenager in Unnao, Uttar Pradesh, was allegedly raped by a politician and his associates in 2017. The case drew attention to issues of political influence, delayed justice, and the challenges faced by rape survivors in seeking legal recourse.

Male Rape Cases: -

- Kerala Actor Assault Case (2017): A popular Malayalam actor was abducted and sexually assaulted by a group of men in a rare case of male rape in the Indian film industry. The incident shocked the public and highlighted the vulnerability of male victims of sexual violence.

⁴ 2017 (6) SCC 1

⁵ 2024 INSC 24

⁶ WP(Crl.) 85/2018

- **Mumbai Male Rape Case (2013):** A male photojournalist was gang-raped by five men in an abandoned mill in Mumbai. The case brought attention to the issue of male rape and the need for better support services and legal protections for male survivors.
- **Haryana Male Rape Case (2018):** In a tragic incident, a mentally challenged man was sexually assaulted by a group of men in Haryana. The case underscored the vulnerability of marginalized individuals to sexual violence and the challenges in accessing justice for male rape survivors.
- **Assam Male Rape Case (2020):** A teenage boy allegedly raped by several men in Assam. This case raised awareness of the need for legal protection and support services and support services for all sexual violence survivors and offenders of sexual violence.

These are only a few examples of complex and diverse cases of sexual rape in India for women and girls. They highlight the importance of a strong legal framework for victim support services and awareness of society in the context of sexual violence in all forms.

SOCIETY VIEW

The views of society on rape between men and women in India are characterized by a complex interplay of cultural, social, legal, and historical factors. These views can vary widely depending on individual beliefs, regional contexts, education levels, and exposure to diverse perspectives. Below are some general themes that reflect societal attitudes toward male and female rape in India:

1. Gender Stereotyping and Victim Blaming: An Overview

Female rape: Historically, Indian society has placed the burden of responsibility on female victims of rape. Victim blaming and stigmatization of female survivors have been prevalent, leading to underreporting and reluctance to seek legal recourse.

Male Rape: Societal attitudes towards male rape victims may include disbelief, ridicule, or emasculation, reflecting deep-rooted stereotypes about masculinity, strength, and vulnerability. Male survivors of sexual violence may face additional challenges in disclosing their experiences due to fear of judgment or societal expectations.

2. Influences and Religious Influences: An Overview

Female rape: Cultural norms, patriarchal structures, and traditional notions of honour and shame have influenced female rape victims' attitudes. The emphasis on women's modesty, chastity, and family reputation often intersects with legal and social responses to sexual violence.

Male Rape: Cultural perceptions of male sexuality, power dynamics, and societal expectations regarding male strength and invulnerability can contribute to the underreporting and marginalization of male rape survivors. Cultural taboos surrounding male victimization may hinder discussions and support services.

3. The Legal Framework and the Justice System

Female Rape: Despite legal reforms and awareness campaigns, the justice system's response to female rape cases has faced criticism for delays, inefficiencies, victim re-traumatization, and low conviction rates. Survivors are often faced with obstacles in accessing legal aid, navigating court procedures, and societal pressures during the trial.

Male Rape: Legal recognition and support for male rape victims have improved in recent years, but challenges remain in addressing societal biases, evidentiary standards, and the availability of support services tailored to male survivors. Efforts to destigmatize male victimization and ensure gender neutrality are ongoing and in progress.

4. Advocacy/Awareness Initiative:

Female Rape: Women's rights organizations, advocacy groups, and civil society movements have played a crucial role in raising awareness about female rape, challenging victim blaming, advocating for legal reforms, and providing support services for survivors.

Male Rape: Advocacy efforts for male rape survivors have gained momentum, with organizations and activists highlighting the need for gender-inclusive approaches, destigmatization campaigns, and tailored support programs to address the unique needs of male victims.

5. Attitude Change and Progressive Shift:

Female Rape: There has been a gradual shift towards more empathetic and survivor-centered approaches to female rape, with increased recognition of consent, trauma-informed practices, victim support services, and efforts to challenge patriarchal norms and gender-based violence.

Male Rape: Attitudes towards male rape victims are evolving, with growing acknowledgment of their experiences, rights, and vulnerabilities. Education, awareness campaigns, and advocacy for gender equality contribute to changing societal perceptions and promoting inclusive responses to sexual violence.

In summary, societal views about male and female rape in India are multifaceted and evolving, reflecting a complex interplay of cultural, legal, and social dynamics. To promote a more compassionate and just response to all survivors of sexual violence, efforts should focus on the stigmatization of victim support services, strengthening legal protection, and promoting gender equality are essential.

CONCLUSION

There are various laws in place to regulate such terrible crimes against both men and women, but the implementation often falls short. There is a disparity in how we handle rape cases involving men compared to those involving women. The fight against violence towards women has sparked widespread protests over the years, highlighting the urgent need for strict laws punishing offenders and their full enforcement. However, it raises questions about whether these laws have effectively reduced such crimes and ensured that perpetrators face consequences. Activists have drawn attention to the challenges faced by male victims under pro-women protection laws, emphasizing the necessity of gender-neutral legislation where men are equally supported when reporting crimes without being judged based on stereotypes of manliness.

Furthermore, there's a call for legislative action regarding potential misuse or abuse of anti-dowry laws as well as reevaluation of existing statutes like the Dowry Prohibition Act which seemingly lack proper enforcement and accountability. In my research paper, I discovered biases within India's Penal Code from 1860 due to an absence of specific legislation recognizing

men as victims of sexual violence until now—a result influenced by limited awareness and narrow definitions found within Indian law surrounding rape allegations.

The Indian legal framework of India about rape reflects a reflects overlapping of legislative reforms, judicial interpretations, societal attitudes, and advocacy efforts. While progress has been made in expanding legal protections, strengthening victim support services, and raising awareness of sexual violence, there is still a need to address systemic obstacles, ensure accountability, and promote gender equality. The continued cooperation between stakeholders, continued support for reforms, and a rights-based approach to rights are essential for all individuals affected by sexual offenses and are essential for advancing justice, dignity, and safety for all persons affected by sexual offenses.

