

Comparative Study of Rape Legislation for Men and Women in India

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Abstract

Rape is an offence against the soul because it kills the victim from inside and out. Rape does not only harm a person physically but more than that mentally. Although rape is gender neutral crime and there are many laws which government has made for protection of male and female. Research on crime against women and men is being done extensively across the world. Moreover, an attempt is made to do a comparative study of rape legislation for men and women in India. After the infamous Delhi gang rape incident that took place in the country in the year 2012, there was a need to condemn and make stricter laws against such crimes against women and men. The government constituted a committee under the chairmanship of the former Chief Justice of India, Justice J.S. Verma to suggest guidelines for the protection of women and passed the Criminal Law (Amendment) Act 2013. The recommendations of the committee were however not taken into consideration as a whole and gender specific laws were framed as a result of bowing down to feminist pressures opposing to gender neutral laws that were recommended by the committee. The author throughout this article tries to examine the loopholes in the Women Protection Laws in India that are gender specific and penalizes only the male gender and does not give equal protection to the male gender with respect to the same crimes being committed against them. The author delves into analysing the current protective legislations in India in the light of gender-neutral laws and conclude by suggesting the necessary changes that can be implemented so as to protect all the genders equally under the law and not protecting only a single class at cost of the other.

Keywords: Rape, Consent, Laws, Comparative Study, Crime, Victim

Introduction

Rape is fourth most common type of heinous crime committed in India. Rape can happen with anyone in this world, no matter what their gender, age or sexuality is. According to Justice Krishna Iyer, A murderer kills the body, but a rapist kills the soul. Across the world, since time immemorial, rape and sexual violence have remained the cruellest form of gender-based violence. The crime of rape robs a person of autonomy over his/her sexuality and bodily-integrity. Construction of gender theory argues that girls and boys are actively involved in constructing their own gendered identities. Men and women can even take up a range of different masculinities and femininities that may at times contradict each other. This construction of gender identities (or subjectivities), varieties of femininities or masculinities, is also seen as dynamic, ongoing, changing and changeable, rather than static or fixed. Allard, Cooper, Hildebrand, & Wealands (1995: 24) assert that we "are not passively shaped by the larger societal forces such as schools or the media, but are active in selecting, adapting and rejecting the dimensions we

choose to incorporate, or not, into our version of gender”. The Resolution 48/104 of the UN General Assembly declared “violence against women, including rape, as a violation of human rights and gender violence”. Article 7 of the Rome Statute of the International Criminal Court classifies rape as an offence against humanity. According to National Crime Bureau’s 2020 report; there was an average of 87 rape cases daily and about 4- 5 lakh cases of rape in an annual year. The prevailing societal norms have always been blaming the victim for the crime committed and not the perpetrator. Recently, there have been various instances and cases, where there was reported violence on men. This article will focus on the various legislations of rape outlined for the protection of women, and the necessity for recognizing the laws and legislation for the protection of men from rape and violence. It was observed by the Guwahati High Court in the case of Nipun Saxena v Union of India, 2018 that “Rape is a crime against the basic human rights and the violation of victim’s Fundamental Rights”.

Literature Review

Sutton. W. (2013) Gender and Sexuality: Opines legally sanctioned same-sex marriages and civil partnerships, noting that in many industrialized countries moves have been made to decriminalize and encompass same-sex unions within the civil law. Opponents see this as sanctioning perversion and as the death knell for the institution of marriage. For many gay people, the right to marry is part of a broader desire to be seen as ‘normal’. This study shows, attitudes towards sexuality have become increasingly liberal in the industrialized world, yet some people still retain quite traditional views. These differences are likely to be present among any group of students. Student responses to the sociological study of sexuality vary widely, from the prurient to the puritan, and for some it is the most personally threatening topic they encounter. The historically and culturally comparative stance of the text establishes diversity as the norm and provides a clear focus for discussion of sexuality as a social phenomenon. It may be useful when dealing with these topics to include in a handout including contact numbers for gay, lesbian and bisexual support groups and rape crisis lines. This chapter makes clear; the links between sexual desire, sexual activity and sexual identity are far from straightforward. Jeffrey Weeks is a major theorist in this area. His work focuses on male homosexual identities, has a strong historical component and draws significantly upon the work of the French theorist Michel Foucault. In this extract he is writing about the paradox that, as sociologists, we have become increasingly aware of the culturally dependent nature Gender and Sexuality of human sexualities, whilst, at the same time, the claiming of certainty about sexuality has become increasingly important to us as individuals.

Unicef, Behind Closed Doors the Impact of Rape on Children: This book explains that Violence in the home is one of the most pervasive human rights challenges of our time. It remains a largely hidden problem that few countries, communities or families openly confront. Violence in the home is not limited by geography, ethnicity, or status; it is a global phenomenon. Children who are exposed to violence in the home are denied their right to a safe and stable home environment. Many are suffering silently, and with little support. Children who are exposed to violence in the home need trusted adults to turn to for help and comfort, and services that will help them to cope with their experiences. Far more must be done to protect these children and to prevent domestic violence from happening in the first place. The findings show that children who are exposed to violence in the home may suffer a range of severe and lasting effects. Children who grow up in a violent home are more likely to be victims of child

abuse. Those who are not direct victims have some of the same behavioural and psychological problems as children who are themselves physically abused.

Kimmel. M. (2001) Male Victims of Domestic Violence: Opines that rape has emerged as one of the world's most pressing problems. Men are suffered of physical violence at the hands of an intimate partner or family member. Efforts to prevent rape and to facilitate its successful prosecution have followed research and advocacy on behalf of its victims. New laws, police procedures, Medical and forensic efforts have encouraged prosecution, while refuges for battered, women, education and therapy groups for men who are violent towards their partners, have sought to transform the conditions of domestic violence. Author indicates that in recent years, a serious debate has erupted among activists, partisan organizations and Individuals about the nature and direction of domestic violence. Decades after first bringing the problem to public awareness, feminist activists now confront a growing chorus of researchers and political activists who claim that women and men are victimized by domestic violence in roughly equal numbers. Despite perhaps several thousand studies that report the preponderance of domestic violence to be perpetuated by males against females, there are also nearly 100 empirical studies or reports that suggest that rates of domestic violence are equivalent. Thus, activists for "men's rights" have suggested that policy-oriented efforts for women have been misplaced, because they focus entirely on women as the victims.

Lorber. J. (1991) The Social Construction of Gender: Opines that Gender is socially constructed and a result of sociocultural influences throughout an individual's development. Gender identity can be affected by, and is different from one society to another depending on the way the members of society evaluate the role of females and males. Gender identity can be influenced from the ethnicity of the group, their historical and cultural background, family values and religion. Often people confuse or misuse the terms gender and sex. Book depicts the fact that the term sex refers to the biological distinction of being male and female. To make the distinction clearer one could consider that we inherit the sex but we learn our gender. Gender is a structural feature of society and the sociological significance of gender is that it is a devise by which society controls its members. Gender like social class and race can be used to socially categorize people and even lead to prejudice and discrimination. Prejudice is a set of attitudes, more likely unfavourable, towards members of a group. Discrimination is overt negative behaviours towards a person based on his or her membership in a group. When there is differential treatment of people based on their sex the term sexism defines this behaviour. Sexism refers to any bias against an individual or group based on the individuals or groups. Gender discrimination is another way one could define sexism and in particular this is associated with discrimination and stereotyped beliefs against women. Stereotypes are beliefs about the characteristics, attributes, and behaviours of members of certain groups and most of them are sociocultural based. Stereotype ideas and beliefs regarding women, although they have been changed and improved, are still evident in our country and in other modern cultures. Unfortunately, in several countries around the world such as Arabian courtiers, Africa and India things have not changed much and women are still considered a minority and do not have equal access and rights in their societies as do males. This variation regarding gender around the world makes prominent that gender identity is influenced by social variables and has little to do with biological variables.

Research Gap

Although many authors have done research on this topic but they just found that what are the provisions regarding rape of men and women in India but they did not study that Is there any comparison of men and women's legislation. And does it really apply in real world. So here is an attempt made to do a comparative study of rape legislation for men and women in India.

Research Objectives

- To identify what specifically provisions do we have for rape of men and women.
- To identify that do we really have gender equality in rape perspective.
- Provide profiles of men most likely to be victims of Rape.
- To Analyse the possible reasons of Rape.
- How society deal with the male victims.

Research Methodology

In the present paper Doctrinal Methodology has been adopted by the researcher through the primary and secondary sources and by studying books, articles and other relevant materials in different libraries and through Internet. The present study is based on both primary and secondary sources. The primary sources are collected from substantive as well as procedural pieces of legislation such as Indian Penal Code 1860, Code of Criminal Procedure 1973, Dowry Prohibition Act 1961, The Protection of Women from Domestic Violence Act 2005, The Criminal Law (Amendment) Act 2013 etc. The Secondary Sources include crime reports, journals, books, case laws, and Internet Surveys etc

Legislation of Rape for Women

“Of late, crime against women in general and rape, in particular, is on the increase.... Rape is not merely a physical assault- it is often destructive of the whole personality of his victim. A murderer destroys the physical body of the victim; a rapist degrades the very soul of the helpless female. The courts, therefore shoulder a great responsibility while trying an accused on the charges of rape” – Justice Arjit Pasayat, in the State of Punjab v Gurmit Singh &Ors, 1996.

From the very ancient era women are getting raped. If we looked upon the statistic of women getting raped the **National Crime Bureau Records**, which states that almost 75 percent women does not feel safe at their own homes and Over 96 percent rapes in India committed by persons known to the victims. According to the reports published by the **World Health Organization**, every 4 minutes a woman is raped in India, whereas as per the Centre for **Development of Women's Studies**, 42 women are raped in India every 35 minutes.

There are many laws introduced by legislature to protect a person from rape and to punish a criminal in the Indian Penal Code are as follows –

Section 375

Section 375 defines the term ‘Rape’. It states that A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: —

(First) — 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 law-fully 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 sixteen years of age.

Explanation. — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

Here this section starts with the word ‘a man is said to commit rape’ hence making it clear that the crime of rape is not a gender-neutral crime. So as per the definition of rape only a woman can be victim of the crime and men can be a perpetrator.

Section 376

Section- 376 states that if a person commits the offence of rape, then he shall be liable to punishment with scrupulous life imprisonment for a term which should not be less than seven years, and may even extend to life imprisonment, and shall also be liable for fine.

Gang Rape

Section – 376 D defines the offence of ‘Gang Rape’ It states that when two or more persons in a group rape a woman with the same common intention of causing any kind of physical injury and hurt to the woman, are liable for the offence of rape. The offence of Gang Rape was criminalized by the Judiciary in the Criminal Amendment Act, 2013.

The persons committing the offence of ‘Gang Rape’ shall be liable with the punishment for a term of twenty years, extending to life imprisonment with the fine.

Custodial Rape

Section – 376 (2) defines the offence of “Custodial Rape”. It states that if any person, who is in a position of authority or any fiduciary relationship, a public servant, superintendent, or a jail manager or any hospital in the governmental centres or police custody commits the offence of rape on any women, shall be prosecuted under the offence of custodial rape. Any person committing the offence of custodial rape shall be punished with imprisonment for a term of 5 years, extending to 10 years.

Marital Rape

Marital Rape has not been criminalized under the Indian Penal Code this crime has been mentioned under the exceptions of rape. It states that if a man is engaged in sexual intercourse with his wife, not being under the age of 15 years, shall not be liable for rape.

Marital rape should be criminalized, and if a woman does not consent to sexual intercourse with his husband, and a man uses any kind of force and threat upon her, then he shall be liable for the offense of Marital Rape. The following misfeasance has been criminalized in the US, Sweden, Denmark, Australia, and the UK.

Case laws

Tuka Ram v State of Maharashtra, 1979

In this case, a young girl named Mathura was called to the police station on an abduction report filed by her brother at the Desai Gunj Police station. When Mathura and her father were about to leave the police station, Mathura was kept back at the police station in the late hours and was raped by the police constables on March 26th, 1972, committing the offense of custodial rape.

The case was taken to the Sessions Court by the victim and her family, but the Judge pronounced the judgment in the Favor of the accused and acquitted him of all the charges of rape, on the justification of tacit consent. The case was then taken to the Bombay High Court and the court contended the judgment of the Sessions Court and held the police constables guilty for the offense of rape. However, the Supreme Court reversed the judgment of the High Court and stated that since there were no marks of injury on the person, showed that the whole affair was a peaceful one, and acquitted the accused.

The judgment by the Supreme Court was widely criticized both inside and outside the Parliament, and there were huge protests in the nation. Consequently, the decision of the Supreme Court was nullified and the accused were held guilty of the offense of rape. The Mathura rape case brought some developments in the rape legislation. The developments made were:

- It enacted Section 114 A of the Indian Evidence Act stating that the presumption should be vested on the victim as to the aspect of consent.
- The offense of custodial rape was criminalized.
- The idea of the burden of proof was amended, stating that it would depend on the prosecution.
- It introduced Section- 228 A in the Indian Penal Code, prohibiting revealing and publish the identity of the victim in rape cases.

Nirbhaya Rape Case (Mukesh v. State NCT of Delhi), 2012

In this case, a woman was brutally raped repeatedly by five men and a juvenile on the night of 12th December 2012 in a bus. The rape created a lot of public outrage outside the parliament in order to grant justice to the victim. The four adults were sentenced to death, and a juvenile was sent to the juvenile center. After this case, the Indian Criminal law underwent multifaceted changes and various amendments were made to the rape laws, namely:

- The death sentence was made legalized.
- Gang rape was introduced and recognized as a criminal offense.
- The term consent was given a wider meaning and connotation under Section 375 of the Indian Penal Code.

All of these sections in Indian Penal Code discussed above are not gender-neutral and only a women can seek under these sections.

Legislation of Rape for Men

First of all, there is nothing called male rape or sexual assault or any sexual related offences against men recognised in the Indian legislation yet. Until now, rape of men was ignored even those men who face the problem of sexual assault does not complaint because they have the fear of society as how they will treat him and those who have courage to complaint, society does not take them seriously. Basically, rape is a crime against basic human rights and violates the victims most cherished rights. In the report published by the **US Statista Research Centre, in December 2020**, it was shown and reported that approximately 52,336 cases are registered, where men were raped or sexually assaulted among the countries in the world, thereby increasing the risk of male vulnerability. It is thus required that the laws should be redesigned in order to protect innocent men from sexual assaults, violence, and rapes.

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- The definition of rape under Section 375 should be amended and given a wider meaning as to the definition should include both man and woman as the primary victims of the offense of rape.
- The Legislation should recognize the crimes and laws related to man, and should also introduce various stringent laws for man.
- There should be setting up various NGOs and organizations, that would determine and take in its assistance the offense of rape for man, so that man is able to report any kind of violence committed on them.
- There is a need for gender-neutral laws in the society that would protect both men and women and also homosexuals from any kind of offense most commonly that of rape. This also is an essential element for the concept of equality under Article 14 of the Constitution.
- Male rapes should be recognized as a crime internationally and nationally, in accordance with the basic human rights as guaranteed under the United Nations Organization.

There are various instances where the males have actually spoken about the assaults and the rapes committed on them. The actor Rahul Raj has expressed that he was sexually abused verbally when 19. Internationally, an actor and activist named Asia Argento was accused of sexually assaulting a male actor, Jimmy Bennet, when he was 17.

It is thus required that the laws should be redesigned in order to protect innocent men from sexual assaults, violence, and rapes.

MEN'S RIGHT IN INDIA

India is a common-law nation with varied customs, a variety of religious communities and a history that goes back to centuries. Women in India are safeguarded by the different statues in India and they can file complaints against anyone for the infringement of their rights. Despite having equal fundamental rights given to men and female, the rights of men are not enunciated as compared to women. The need for gender neutrality is of high requirement in the rape legislation as from the beginning women are only considered as the victim may be due to patriarchy prevalent in Indian society. Even due to the rise of women empowerment and feminism, the concept of gender neutrality laws was hindered. Most of the provisions of IPC which states about offence against women allude men only as a criminal.

Now the scenario is changed, many PIL(s) have been filed in various High Courts and Apex Court for making rape laws to be gender – neutral. In 2017, Sanjiv Kumar had questioned the legality of existing

rape laws which only consider men to be the perpetrator in Delhi High Court. It was mentioned that now the scenario is changed and is requisite from the society to think “beyond the male-on-female paradigm”. The Law Commission recommended making laws to be gender neutral by substituting the word “rape” with “sexual assault”. The Union Government agreed to make legislation to be gender-neutral after the Nirbhaya incident. The Justice Verma in its report suggested using “person” instead of “women” to cover all forms of sexual violence. But Criminal Law (Amendment) Act ,2013 restored to the gender-specific definition after criticism from the feminist groups due to prevalent patriarchy present in the society

Case Laws

Sushil Kumar Sharma v. Union of India

Under the case, Sushil Kumar Sharma v. Union of India which is one of the historical cases, the Supreme Court held sec 498A as legal terrorism. These amendments were bought in 1985, for the protection of women against dowry harassment and to empower women about the bad consequences related to dowry. This is was one of the best steps taken by the government of India and up to an extent they have been successful. But the strictness of law was taken into an advantage by the women to file false cases against their husbands to fulfill their demands.

Kalpna v/s Surendra Nath, both the parties were married and lived together for one and a half months. The allegations filed against the appellant were that she humiliated the respondent in front of his friend by refusing to give tea to them. By the appellant's wish the respondent, joined her in college for further studied and one day she went to college and never came back. And she had filed a case against her husband under the dowry prohibition act. The courts accepted the respondents version and held Refusal of contribution in the household work amounts to cruelty.

Prem Chandra Pandey vs Smt. Savitri Pandey, the wife has filed a false case on the husband and his family, that they demanded dowry before the marriage and after marriage. The demands were not fulfilled by the wife's father so they tortured her. and she alleged a fake allegation that he has a marriage with another woman and again married only to fulfill his satisfaction demands. All these allegations were proved wrong. Hence the court held false allegations of adultery amounts to cruelty.

Narendra v. K. Meena, the husband was consistently being compelled by his wife to live separate from his family members but in the family, he was the only person earning and who used to maintain the family. While the main interest of the wife was to spend the husband's whole income. She also made a fake allegation on the husband of him having an external affair with their maid. She also attempted to commit suicide without any reasonable ground by burning herself after pouring kerosene oil.

Research Findings

As per my study I found that in India, you have to be a man to do a rape and a woman to get raped. After the Criminal Law (Amendment) Act, 2013, Section 375 of the Indian Penal Code reads such – A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: —
(First) — 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 law-fully 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 sixteen years of age.

Although, here in this definition there are many things to praise or many things to criticise, such as: -

- The law is gender specific
- Rape does not cover penile-vaginal penetration.

The law relating to stalking, voyeurism and sexual harassment are all gender specific. The laws relating to throwing acid are gender-neutral.

Conclusion

There are various laws to regulate such heinous crime against both men and women but when it comes on the implementation part, we lack somewhere or we need to make an attempt to have a hold upon it. In some part we are taking much concerns only about women's rape and not taking men's rape that serious. The violence against the women of our country has been one that has been fought against for decades and this gained widespread protests across the country. We have been witnessed to some heinous crimes and thus emphasizing much on the need for coming up with stringent laws of punishing men and enacting pro women legislations and implementing them to the fullest. One question still remains, have these legislations been able to curb such crimes and have the real offenders been punished at all? Several activists and organizations have tried to highlight the plight of men been victimized in the midst of such pro women protection laws. This brings in the necessity of framing gender-neutral laws. Men should have the equal access to come into the open just like women and not be judged for their manhood for reporting crimes against them. Judiciary also demands that if provisions of law are misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. Under the Dowry Prohibition Act both giving and taking are punishable offence but no one has been penalized till date for giving dowry. The repeatedly misuse of anti-dowry laws can lead to new legal terrorism as have been suggested by the Malimath Committee Report. The gross misuses are reported in respect of dowry related I.P.C. provisions. Undoubtedly, the dowry prohibition act is also being misused, it can be said that all laws are capable of and subject to abuse and misuse. Through this research paper I found the biasness of the Indian Penal Code, 1860 towards the lack of legislation and statutes to identify men as victim of sexual violence. Until now, the sexual assault of men was ignored that is because of lack of awareness and the narrow definition of rape in Indian legislation which clearly focus on sexual assault with women so as researcher my suggestion is there should be gender-neutral rape laws in India.

Recommendations

Laws for the safety and security of women should be made and similar laws should be made for men's human rights protection too. The major concern and problem that this article highlights is that gender-biased laws have been misused in the past by women in India and it's time to change this. Some of the basic changes and amendments that our current laws need is becoming gender-neutral in crimes like stalking, rape, harassment, dowry, etc. The Indian Judiciary system should give a message to the society the laws and sections exist to protect women and not be misused by them. Moreover, courts should take article 14 and 21 as the basis to provide equal rights protection to men. Article 14 stands for equality before law along with equal protection by the law. Article 15 stands prohibition of any kind of discrimination on the basis of region, race, caste, sex, place of birth, etc. Article 21 stand for the personal liberty of life of every person. Keeping these articles of the constitution in mind, the Indian Courts must take adequate steps to protect men from fake cases. Promotion of gender-neutral laws in India and National Men's Commission are the need of the hour for the Indian society to be just and unbiased.

As researcher I found that the following changes should be made as soon as possible –

- There should be gender-neutral rape laws in India.
- There should be one separate court for men as women's have like – Mahila Adalat.
- Male and female perpetrators of rape or sexual violence should be punished equally without any discrimination.

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