

**A CASE FOR GENDER-NEUTRAL RAPE LAWS
IN INDIA**



By

Jai Vipra

CCS working Paper # 286

July 2013

Acknowledgements

Thanks are in order to everyone from Centre for Civil Society, but most of all to Prashant Narang, my research guide and Urvashi Kapuria, the internship co-ordinator. Thanks also to my fellow interns and to everyone who was kind enough to speak to me about rape, sexual assault and the law.

Introduction

In India, you have to be a man to officially rape and a woman to officially get raped. If you are a man raped by a man or woman, or a woman raped by a woman, or a transgendered or transsexual person, you have at best inadequate option for redress or at worst no option for redress at all. There has been government support in making rape laws gender neutral, but it has not happened due to opposition from women's groups. Gender neutrality in rape laws has been called "a concept devoid of all social reality of sexual abuse in our country." (Agnes, 2002)

The paper explores rape laws in India, rape laws around the world and 5 major arguments against gender-neutral rape laws in India:

1. Women cannot rape men
2. Women do not rape men
3. Men are not similarly affected by rape
4. Rape is about power
5. Gender-neutral rape laws will have unintended consequences

The short descriptions do not do the arguments justice. They are complex and well-made, and yet it is possible to refute them. Much of the support for gender-neutral rape laws in India has been based in the rhetoric of equality, one that is dismissed by critics easily. This paper will attempt to go beyond that rhetoric to understand how gender-neutral rape laws make sense within a feminist perspective.

Given the lack of statistics on male rape in India, a survey among 222 men was also conducted. 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. The meaning and implications of these results are discussed in detail.

The paper also hypothesizes how, by making a statement on male sexuality and affording a more central position to consent, gender-neutral rape laws can end up helping not only men, but also women. Same sex rape and rape of and by transgendered or transsexual people is not explored because there has not been much opposition to criminalise those, albeit with the rider that first homosexuality must be completely decriminalised.

Thus, empirically as well as theoretically, it is possible to make a strong case for gender-neutral rape laws in India.

Rape laws in India

Male-on-female rape: After the Criminal Law (Amendment) Act, 2013, Section 375 of the Indian Penal Code reads such:

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 part 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 7 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 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.

Explanation 1.—For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Although there is much to praise and much to criticize in the law, the following are directly relevant to this paper:

1. The law is completely gender-specific.
2. Rape does not only include penile-vaginal penetration.
3. It requires *active* consent.
4. Mere lack of physical resistance cannot be construed as consent.

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

Male-on-male rape: Section 377 of the Indian Penal Code reads such:

“Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.”

The law has been understood to criminalise “oral sex, anal sex and penetration of other orifices.” (Naz Foundation vs Government Of NCT Of Delhi, 2009) There are two issues with this law: one, that the offence is not called rape; and two, that the State does not allow you to consent to what it deems unnatural.¹ (Baxi 2013)

Female-on-female rape: The law on gang rape (Section 376D) reads thus:

“Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment...”

Thus it is possible to convict a woman of raping a woman as part of a gang. Other female-on-female rape is not punishable under law since even under Section 377, penile penetration is a necessary condition.

Transgendered/transsexual rape: This too can only be punishable under Section 377 provided there is penile penetration.

Female-on-male rape:

In the Criminal Law (Amendment) Ordinance, 2013, the crimes of rape and sexual harassment were gender neutral. The term “rape” was removed entirely and was substituted with “sexual assault”. However, strong objections were raised by women’s

¹ While the Delhi High Court judgement (2 July 2009) does decriminalize consensual, private homosexuality, its judgement is not binding on other High Courts or the Supreme Court. The Ministry of Home Affairs holds that “such acts cannot be rendered legitimate only because the person to whose detriment they are committed has given consent to it.”

groups (PTI, 2013; Reddy, 2013) and the Act ended up making the offences of rape and sexual harassment gender specific. Women can no longer rape or even sexually harass men.

Thus only male-on-female rape is acknowledged and clearly defined under law in India.

The following section explores rape laws around the world and finds that it is not only “Western feminists” (Agnes, 2002) who have advocated for gender-neutral rape laws.

Rape laws around the world – how many are gender-neutral?

Out of the 96 countries studied, 63 were found to have rape or sexual assault laws written in gender-neutral language, 27 had rape laws that were completely gender-specific (i.e., the perpetrator was defined as male and the victim as female) and 6 had partly gender-neutral laws (the perpetrator was defined as male and the victims could be male or female)². Detailed tables are given in the appendix.

² The source for this data is the Penal or Criminal Code of each country. The countries that were not studied usually had inaccessible criminal codes or inconsistent laws across states, like in the United States.

Arguments against gender-neutral rape laws

“Women cannot rape men.”

“I have doubts whether a woman can commit rape; the reason is that a man has to be aroused sexually to be able to have sex with a woman. If a woman tells a man that he must have sex with her, it won't work because the man will be so frightened and disorientated that he won't really be able to do it. Under that circumstance, the man won't be able to be in the proper physical mood to be able to have sex with the woman.” (Madukwe 2013)

- Vanguard, a Nigerian newspaper

“To presume that women can rape men is rather outrageous. While women can sexually harass men, they can't sexually assault them. There have been no such cases anywhere.” (Divya A 2010)

- Flavia Agnes in The Times of India

“It is physically impossible for a woman to rape a man. Arousal implies consent.”

- Dr. Anand Kumar, Department of Reproductive Biology, AIIMS, in an interview with the author.

When national media, feminists, lawyers and even doctors claim that a woman raping a man is not just an anomaly, but is quite impossible, it seems difficult to proceed with the argument for gender-neutral rape laws at the outset.

i. Arousal during rape

The belief here is that a woman cannot rape a man in the conventional sense of the term; i.e., penile-vaginal penetration. Arousal is thought to imply consent, but there is a great deal of evidence to suggest that arousal does not, in fact, mean consent.

Sarrel and Masters (1982) conducted case studies on 11 men who had been sexually assaulted by women. The men went through humiliation, anxiety, fear, anger and terror and yet responded sexually. They had erections; several even reported ejaculation. Physical response even took place at the threat of castration.

Levin and van Berlo (2003) study a number of sources to arrive at the conclusion that the “the induction of arousal and orgasm does not indicate that the subjects consented to the stimulation. A perpetrator's defence simply built upon the fact that evidence of genital arousal or orgasm proves consent has no intrinsic validity and should be disregarded.”

A lab experiment finds that in subjects who were shown an erotic movie, the ones threatened with an electric shock tended to respond with increased penile size as compared with the subjects that were not threatened with electric shocks. The authors conclude that anxiety increases sexual arousal (Barlow, Sakheim and Beck, 1983).

Further, as Msaki (2011) notes, the slightest degree of penetration of the vagina by the penis is enough to establish rape, and hence male arousal is not an absolutely necessary condition for rape.³

Thus, two things are abundantly clear: arousal does not imply consent; and, arousal is not necessary for rape. It is, then, quite possible for a woman to rape a man.

ii. Other kinds of rape

Forced oral and anal penetration can be considered rape; in fact, women's groups have wanted the definition of rape to be broadened⁴, albeit not for female-on-male rape. (Agnes, 2002)

Currently the law in India does identify other kinds of penetration as rape. Thus, as the definition of rape is not legally limited to penile-vaginal penetration, it cannot be said that women cannot rape men.

³ Also see *Tarkeshwar Sahu v. State of Bihar (now Jharkhand)* [(2006) 8 SCC 560] and *Madan Gopal Kakkad vs Naval Dubey And Anr* (1992) where even the slightest degree of penetration counts as rape.

⁴ See *Sakshi vs. Union of India*, 2004. Sakshi is an NGO that filed a PIL to broaden the definition of rape which was rejected on the grounds that "unnatural" sex was already punishable under Section 377.

“Men are not raped in the daily course of life.”

“Is it a problem [in] society that women are going around raping men?” (Polanki 2013)

- Kavita Krishnan, Firstpost

“There are no instances of women raping men.” (TNN, 2012)

- Vrinda Grover, Times of India

i. Worldwide statistics

The second argument is that while women can physically rape men, they do not do it. Or even if they do, it is so rare so as to be a freak incident. Despite male rape not being researched as widely as female rape, there are several statistics to suggest that men are raped and the prevalence of male rape is wider than is generally presumed.

The National Intimate Partner and Sexual Violence Survey (2010) is a telephone survey that measures the magnitude of sexual and other violence among adult men and women in the United States. It finds that 1 in 71 men (1.4%) have been raped once in their lifetime. It should be mentioned that the corresponding figure for women is 1 in 5 (20%). While the figure for women is much higher, the figure for men is by no means negligible (It is an estimated 1.5 million men). The figure for men includes oral or anal penetration by a male using his penis. It also includes anal penetration by a male or female using their fingers or an object.

It should also be noted that 28% of male victims of rape were first raped when they were 10 years old or younger, as compared to 12% of female victims.

But when the categories of “made to penetrate” (4.8%) and “sexual coercion” (6%) are included, the figure including rape is 12.2% (an estimated 13.7 million men). Further adding the categories of “unwanted sexual contact” (11.7%) and “non-contact unwanted sexual experiences” (12.8%), the figure becomes 22.2% (an estimated 25 million men, not counting rape).

Hartwick, Desmarais and Hennig (2007) studied 261 male and 257 female university students and found that 38.8% of men had been sexually coerced, as compared to 47.9% women. It should be noted that the authors include “verbal pressuring” as a form of coercion for both men and women.

Krahé, Scheinberger-Olwig and Bieneck (2003) conducted two separate studies among heterosexual men. Their results are collated in the following table. The “aggressive strategies” employed by women included physical force, exploitation of the man's incapacitated state, and verbal pressure. “Unwanted sexual contact” included kissing/petting, sexual intercourse and oral sex. Kissing/petting was the most frequently reported unwanted sexual activity, followed by sexual intercourse and oral sex. Prevalence of non-consensual sex was higher with someone known to the respondents as compared to strangers.

Table 2.1 Prevalence of non-consensual sex among men

TOTAL NUMBER OF MEN	MEAN AGE	PERCENTAGE OF MEN WHO REPORTED NON-CONSENSUAL SEX WITH A WOMAN	PERCENTAGE OF MEN WHO REPORTED ATTEMPTED NON-CONSENSUAL SEX BY A WOMAN
247	18.3	25.1	23.9
153	22.3	30.1	23.5

Adapted from Krahe, Scheinberger-Olwig and Bieneck, 2003

ii. Survey results

Given the lack of male rape statistics in India, a survey was conducted among 222 men. The survey was deliberately kept short, asking about attitudes toward rape and instances of sexual coercion. The results, while surprising, are not entirely unexpected. They are also largely consistent with some previous research (Hartwick, Desmarais and Hennig, 2007; Krahe, Scheinberger-Olwig and Bieneck, 2003; NISVS, 2010).

A total of 305 men filled the online survey. While it has limitations in that it is anonymous and self-reported, these are also probably its strengths. It is not easy to get people to admit to being raped, and the guarantee of anonymity is a good motivator. After eliminating responses from respondents below 18 years of age, responses originating outside India⁵, and inconsistent responses⁶, the sample was narrowed down to 222 men. The following tables illustrate the key results:

Table 3.1 "Do you think women can rape men?"

AGE BRACKET	TOTAL NUMBER OF RESPONDENTS	MEN WHO BELIEVE WOMEN CAN RAPE MEN	
		Number	Percentage
18to24	116	83	71.60
25to34	72	61	84.60
35to44	29	27	93
Above 45	5	5	100
Overall	222	176	79.30

The belief that women can rape men seems very widespread; only about 11.3% said that women could not rape men (the rest said they did not know).

⁵ While being fully aware of the possibility of Indians outside India talking about their experiences in India and the existence of proxies, the author still saw this as a necessary precaution so as to ensure the reliability of results while maintaining the privacy of the respondents.

⁶ For example, respondents who answered "No" to "Do you think women can rape men?" and "Yes, by a woman" to "Have you ever been coerced or forced into sex as an adult?" were not counted.

Table 3.2 "Have you ever been coerced or forced into sex as an adult?" (1)

Age bracket	Total number of respondents	Men who reported having been coerced or forced into sex as an adult by a woman	
		Number	Percentage
18to24	116	7	6
25to34	72	16	22.10
35to44	29	12	41.20
Above 45	5	1	20
Overall	222	36	16.10

Table 3.3 "Have you ever been coerced or forced into sex as an adult?" (2)

Age bracket	Total number of respondents	Men who reported having been coerced or forced into sex as an adult by a man	
		Number	Percentage
18to24	116	2	1.60
25to34	72	2	2.80
35to44	29	0	0
Above 45	5	1	20
Overall	222	5	2.10

It is essential to note here that the question mentions coercion or force and that coercion can take various forms. It does not always need to include violence or the threat of violence. The unusually high percentage of men between 35 to 44 years of age who said they had been coerced or forced into sex by a woman can probably be explained by the fact that a lot of them mentioned that it was their wife doing the coercing, hinting at the possibility that much of male sexual coercion happens within relationships. Male on male rape, by comparison, was not as prevalent as female on male rape.

It is perhaps not appropriate to call *all* these cases rape; to borrow a term from Hartwick, Desmarais and Hennig (2007), a lot of these men have possibly been "sexually victimized". But the figures themselves are too high to be ignored, and the existence of at least a few outright rape cases cannot be ruled out. There is also the tendency to see male sexual coercion as less serious than female sexual coercion that we must guard against.

The same can be said for the following tables:

Table 3.4 “Has any man you know been coerced or forced into sex?” (1)

Age bracket	Total number of respondents	Men who knew a man who had been coerced or forced into sex by a woman	
		Number	Percentage
18to24	116	13	11.2
25to34	72	20	27.8
35to44	29	13	44.8
Above 45	5	0	0
Overall	222	46	20.7

Table 3.5 “Has any man you know been coerced or forced into sex?” (2)

Age bracket	Total number of respondents	Men who knew a man who had been coerced or forced into sex by a man	
		Number	Percentage
18to24	116	11	9.5
25to34	72	5	6.9
35to44	29	2	6.9
Above 45	5	1	20
Overall	222	19	8.6

A more detailed survey was beyond the scope of this paper, but future surveys must find the types of coercion and force employed and correlate them with figures for women.

iii. Interviews with doctors and the police

A few qualitative interviews with doctors and the police were also conducted. 4 police stations were visited and doctors were consulted. This is not intended to be a sample survey. The following trends and findings have emerged from these interviews:

1. 2 out of 3 doctors believed it was possible for a woman to rape a man.⁷
2. A doctor at the Forensics Department at AIIMS had seen 10-20 male rape victims in the last 3-4 years. He believes male rape is very common in armed forces and in prisons.⁸
3. He had also seen 4-5 cases of female-on-female rape in his career.
4. A DCP of Police, who was a doctor by education, reported that 3-4 out of every 7 cases of marital discord involved a female accused and male complainant.⁹

⁷ Dr. Sudhir Gupta (Forensics Department, AIIMS) and Dr. BB Choudhary, DCP of Police believed arousal did not imply consent. Dr. Anand Gupta (Department of Reproductive Biology, AIIMS) believed arousal implied consent.

⁸ Dr. Sudhir Gupta

⁹ Dr. BB Choudhary

5. Only one case of a male victim (of gang rape, involving all male perpetrators) was found after enquiries in 4 police stations.¹⁰
6. During interviews with the police in the Hauz Khas police station, a story of harassment by a woman emerged from another person present in the room (who declined to reveal his identity).
7. No registered cases of even female-to-male sexual harassment were found.

These interviews indicate that male rape happens but is not reported.

¹⁰ The case was registered in the Nizamuddin police station. Other police stations visited were Hauz Khas, Saket and Hazrat Nizamuddin Railway Police.

“Men are not similarly affected by rape.”

“The consequences of rape for a woman are far-reaching. She has to battle social stigma, social mindset. While fixing marriages, nobody asks a man if he is a virgin.” (TNN 2012)

- Flavia Agnes

This belief is tied in with the belief that men do not *mind* non-consensual sex, and that it really does not matter if men are raped because society does not judge them.

Research, however, shows that men do mind. NISVS (2010) finds higher prevalence of frequent headaches, chronic pain, difficulty sleeping, activity limitations, and poor perception of their own physical and mental health in men who have been victims of rape, stalking, or physical violence by an intimate partner.

Masters (1986) finds that men who have been raped by women face sexual dysfunction and disorder and are unable to respond physically to a female partner of choice even two years after the attack. The men had lost their “sense of personal dignity and confidence in [their] masculinity.”

Walker, Archer and Davies (2005) interviewed 40 male victims of rape and found that the long term effect of rape for men included anxiety, depression, increased feelings of anger and vulnerability, loss of self-image, emotional distancing, self-blame, and self-harming behaviours.

Frazier (1993) studied 74 male and 1,380 female rape victims and found that male victims were more depressed and hostile immediately post rape than female victims.

Carpenter (2009, citing Mezey, 1987) finds that the “male coping strategy characterised by denial and control renders them more prone to later psychiatric problems and reduces the likelihood of seeking help.”

Perhaps rape does not affect men and women in *identical* ways; it does, however, affect men adversely.

Also, determining the seriousness of a rape in terms of its ultimate consequences is a slippery slope: if we are to say that rape is worse for women than for men because women face more serious consequences, what then stops us from saying that the rape of a prostitute is not as serious as the rape of a virgin girl? Or that the severity of rape is diminished when a rapist marries his victim?

To be sure, consequences of rape are important. But they are not everything about rape, and the aspect of non-consent should be enough to classify any sexual act as rape. Whether the victim is able to get married or not later in life is irrelevant to the classification of the crime itself.

“Rape is about power.”

i. Emotional coercion – is all rape a crime of power?

The title oversimplifies the topic, as there are different but overlapping strands within this argument. This is an attempt to analyse this theory of rape and its implications on rape laws.

Susan Brownmiller’s 1975 book, *Against Our Will*, proclaims on the cover that rape is a “conscious process of intimidation by which *all* men keep *all* women in a state of fear [emphasis in original].”

The book goes on to affirm her conviction in the idea of rape being about power:

“...rape became not only a male prerogative, but a man’s basic weapon of force against woman, the principal agent of his will and her fear. His forcible entry into her body, despite her physical protestations and struggle, became the vehicle of his victorious conquest over her being, the ultimate test of his superior strength, the triumph of his manhood.” (Brownmiller 1975, 14)¹¹

Brownmiller has a very broad definition of rape:

“...rapists may also operate within an emotional setting or within a dependent relationship that provides a hierarchical, authoritarian structure of its own that weakens a victim’s resistance, distorts her perspective and confounds her will...similarly the glamour attached to cultural heroes, such as a movie star, sports figure, rock singer or respected-man-in-the-community, provides a psychological edge that lessens the need for physical coercion until it is too late for the victim to recognize her predicament.” (Brownmiller 1975, 256)

She considers “emotional coercion” rape, and believes it is only men who can emotionally coerce women into having sex, because of the social hierarchy and expected feminine behaviour. Is it not reasonable to assume, then, that women can rape men in institutional settings where the power lies with the woman and the man is expected to comply?

Or even when a man is coerced into sex by a female celebrity? Consider the case of Joyce McKinney, a former Miss Wyoming, who raped Kirk Anderson, a Mormon missionary. McKinney did not just use emotional coercion – she kidnapped Anderson at gunpoint and chained him to a bed. (Leonard 2011) McKinney and Anderson did have sexual relations before the rape, but if having prior sexual relations with the victim makes a male rapist no less guilty, so should it be for a female rapist. This is very much a rape facilitated by power and made to seem trivial due to expected masculine behaviour.

ii. Can rape be just about sex?

It is still very much worth to explore this argument further. Flavia Agnes in *Law, Ideology and Female Sexuality*, writes,

¹¹ Interestingly, when asked “Can a woman rape a man?” Brownmiller answered “I think it’s a biological impossibility.” (Moore 1975)

"As far as women's situation is concerned, throughout the two decades of struggle, not a single case of a reversal of gender roles, in the realm of sexual offence, had ever surfaced in the Indian context nor at any time formed part of the discourse. In this entire history, no one has ever advanced the plea of sexual violation by women." (Agnes, 2002)

It is not too presumptuous to believe that there may not have been a single publicized case of a woman raping a man in India because of two reasons:

1. There is stigma attached to being raped as a man that discourages men from reporting a rape.
2. There are no laws that deal with such a situation; to quote one police officer, "We know of rape cases. But even if a man walks in to the police station saying he has been raped by a woman, we cannot file a case."¹²

Levine (2006) puts it well 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."

But this reasoning is easy to dismiss if one believes that rape is purely a crime of power. Since *Against Our Will* set the tone (and for the large part, deservedly so) for much of the feminist movement post 1975, the idea of rape being about power and not sex has gone more or less unquestioned for a long time. Some psychologists and scientists, however, have argued that rape is not all about power. Steven Pinker, a cognitive scientist says in an "Ask Me Anything" on popular website reddit:

"I believe that the rape-is-not-about-sex doctrine will go down in history as an example of extraordinary popular delusions and the madness of crowds. It is preposterous on the face of it, does not deserve its sanctity, is contradicted by a mass of evidence, and is getting in the way of the only morally relevant goal surrounding rape, the effort to stamp it out."¹³

The "mass of evidence" (McKibbin et al, 2008; Palmer and Thornhill, 2000; Wilson 1989, 128-131) Pinker refers to has been debated furiously, but both sides now seem to agree that rape is not *all* about power. Palmer and Thornhill, who put forth an evolutionary theory of rape, find that many of their critics reinterpret the "rape is about power" idea to say that it never meant "rape is not about sex at all." Palmer and Thornhill (2003) call this interpretation "revisionist history".

Be that as it may, the idea of rape being solely a crime of power and dominance with the intent to humiliate and degrade is not universally accepted. This makes the argument to have gender specific laws because women are subjugated, very problematic.

¹² Sub Inspector of Police at the Hauz Khas Police Station, New Delhi, in a personal interview with the author.

¹³ Available at:

http://www.reddit.com/r/IAmA/comments/1a67x4/i_am_steve_pinker_a_cognitive_psychologist_at/.

Verification of identity was provided by Pinker.

If rape is based in desire, there is no reason to believe that women do not rape. In fact, it can be hypothesized that if rape is based in desire and women do have desires, they may not feel it is wrong to coerce a man into sex – the belief that men always want sex is, we can safely assume, quite prevalent. What is interesting is that *men* who hold such beliefs are more likely to be raped. Hartwick, Desmarais and Hennig (2007) find that “the belief in men’s sexual accessibility was predictive of sexual victimization for both men and women.” The authors define this as a belief that “men are constantly desiring and always willing to engage in sexual activity,” and go on to state,

“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. Norris, Nurius and Dimeff (1996) suggest that feelings of guilt or responsibility make it more difficult for individuals to offer effective resistance. Accordingly, men who feel guilty about their own reluctance may have more difficulty offering effective resistance, and, as a consequence, are more vulnerable to being coerced into sexual activity.”

Other research corroborates these findings. For example, Anderson and Struckman-Johnson (1998, 30 citing Beneke, 1982; Muehlenhard and Cook; 1988) finds that for men, “there may be little social support for refusing sex.”

Brownmiller (1975, 256) and Kate Millett (1970,) both use the term “been had” very evocatively; is it not correct to say that in cases where men are coerced into sex because they believe that as a normal man, they must consent to sex, they have “been had” too? This kind of female-on-male rape is at least as much a result of an unfortunate social construct as is male-on-female rape. Admittedly there are problems in legislating such behaviour, but similar problems exist for women as well.

I am not arguing that women in general are not kept subordinate to men in society; it would be foolish to do so, especially for Indian society. Consider how Sohaila Abdulali’s attackers behaved:

“After what seemed like years of torture (I think I was raped 10 times but I was in so much pain that I lost track of what was going on after a while), we were let go, with a final long lecture on what an immoral whore I was to be alone with a boy. That infuriated them more than anything. They acted the whole time as if they were doing me a favour, teaching me a lesson. Theirs was the most fanatical kind of self righteousness.” (Abdulali 1983)

It cannot, when such things happen, be argued that rape is *never* a crime of power. I am merely arguing that even if there are very stark inequalities between men and women, that is no basis to say that women do not rape men.

iii. The dangers of structural analysis

Society has far-from-ideal expectations from both women and men; in the case of men, as in the case of women, these expectations lead to victimization. And where there is victimization, there must be some option for redress. Commenting on the reality of the social existence of women, like Agnes does, is simply not enough to say that female-on-male

rape does not happen and if it does happen, must not be penalised. I find parallels in this argument with what Sreenanti Banerjee calls the commodification of women by both the left wing and the right wing (Banerjee, 2013). Arundhati Roy (2012) in an interview in the aftermath of the December 16 gang rape in Delhi, says,

“But, the other thing is that there is a widening gap between the rich and the poor. Earlier at least the rich did what they did with a fair amount of discretion. Now it’s all out there, on television, all the sort of conspicuous consumption, and there is an anger and a psychosis building up. Women at the top, at the middle and the bottom are going to pay the price for it, not so much at the top but certainly the Dalit women are continuously going to be subjected to violence, and young urban women like the one to whom this happened are very, very vulnerable to this kind of psychotic rage.”

Banerjee responds:

“...conceiving capitalist exclusion as a cause of rapes in the cities creates an ambience of shaming the “slut” by claiming that such pomp-exuding ‘looseness’ furthers capitalism’s brutality of alienating the urban youth (which also strengthens the implied logic that ‘she deserved it’). Thus, unless we put a vehement period to this perceived cause and effect chain of consumption habits of the rich and its resultant repercussion of poor optionless anxious migrants raping, we shall never be able to remove ‘shame’ out of rape, especially when the rape is that of an upper-middle class woman. It would perpetuate an atmosphere of the much talked about slut-shaming and “victim” blaming (as a ‘predictable’ outcome of ‘ugly modernity’) if not in the language of provocation, but certainly in the language of apparently sanitized social science ‘analyses’ of cities...Here, a politically motivated continuum is established between modernization, urbanization and rape.” (Banerjee, 2013)

While on the face of it, this particular debate seems irrelevant to the gender-neutrality issue, what I am trying to illustrate is that it is the same kind of structural analysis that decides women must not be punishable for raping men. What Banerjee is talking about is the withdrawal of agency from women when analyzing rape in this manner; what is happening in the gender neutrality discourse is the removal of agency of men and women, who are seen as not much more than participants in a system that defines the way they behave. We must find a way to look beyond social structures and try to provide some measure of justice to all victims. Laws cannot, of course, be catered to every kind of person and crime in a state; and yet that is why the judiciary exists, to decide, on a case-by-case basis, if a wrong has been done. But if there is absolutely no provision to right that wrong, are men who are raped by women simply collateral damage in the quest for a fairer society? Is it morally defensible to leave male victims with no redress because women as a group are on the whole more vulnerable?

As Rumney (2007) writes:

“It might also be asked why it is not possible to recognize the reality of male power, yet at the same time recognize that it is not a singular all-embracing force that shapes the lives of all men and women in identical ways, in all circumstances.”

We need to realize that rape is a function of interpersonal relationships and sexual factors as well as that of social structures, and not make social inequalities an excuse for excluding a certain set of victims from the law.

“Making rape laws gender neutral will have unintended consequences.”

There are two concepts within this argument:

1. Gender neutrality leads to decontextualization of the crime of sexual assault. A gender neutral rape law does not take into account the specific effect of sexual assault on women.
2. Gender neutral rape laws will be misused, either to counter-accuse female victims themselves of rape, or to unnecessarily humiliate and harass women, victimizing them further.

I will attempt to explain and evaluate both these concepts.

i. The decontextualization argument

This argument is explained well by Tang (1998):

“Some advocates for rape victims question changes to the Criminal Code that introduced the gender-neutral offence of sexual assault. Cohen and Backhouse (1980) contend that these changes are superficial and that they work to the detriment of women by minimizing the harm of rape. Chase (1984) shares this feeling, noting the harm suffered by rape victims has been desexualized by the gender-neutral language of the term sexual assault. Above all, gender-neutral interpretations preclude recognition of the conditions that caused the amendments by “recurrent exclusion of the collective impact of sexual violence” (Ellis, 1986, p. 17). These worries are not without ground. Most legal analysis in the courts is both abstract and decontextualized. Feminist writers are concerned that contextualized and inequality-grounded analyses of the women’s situations are not receiving sufficient attention in judicial deliberations (Majury, 1994).”¹⁴

There is also the issue that gender-neutral rape laws will lead to the application of a gender-neutral standard to rape; that judges will expect men and women to behave alike in circumstances of rape. Judges have required women to use physical resistance to demonstrate their lack of consent. (Anderson and Struckman-Johnson 1998, 37 citing Estrich, 1987) But these judgements were made before laws in the United States were gender neutral, and it is not at all clear how gender-neutral rape laws will exacerbate the situation. Also when the law in India already very explicitly states that a simple lack of physical resistance does not constitute consent, there is no reason to fear that judges will expect women to physically resist. In fact, the Indian judiciary has been very conscious about the “special” consequences of rape for women, although sometimes paternalistically. Consider the following statements made by Indian judges:

“In the context of Indian culture, a woman - victim of sexual aggression - would rather suffer silently than to falsely implicate somebody. Any statement of rape is an

¹⁴About this paragraph, Rumney (2010) writes: “...upon consulting this source we find that the authors do make the point Tang claims, but not in the context of gender neutrality. For example, they do talk about the reforms minimizing harm, but in the context of proposed sentencing reductions that have nothing whatsoever to do with gender neutrality.” Nevertheless, the argument Tang makes is a prevalent one in India. For example, Menon (2004, 139) refers to a judgement in Canada that concluded that touching a girl’s breasts was not sexual because the same could not be said about a man’s beard, also a secondary sex characteristic.

extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit...the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape..." (Raju v. State of H.P., 2009)

"And when we think of integrity of the person violation of which 'society cannot and must not tolerate' (Susan Estrich, Teaching Rape Law, The Yale Law Journal) we think not only of women clad in chiffon, draped in misty soft powder sprinkled with a swans down puff challenging to sink ships and stop heart beats, though they also are no less important, but of also those bare-faced a la Bankim Chandra imprisoned within the confines of female subordination and restricted life chances." (Smt. Sudesh Jhaku vs K.C.J. And Others on 23 May, 1996)

"We are told at the bar that the victim who is now 19 years old, after having lost her virginity still remains unmarried undergoing the untold agony of the traumatic experience and the deathless shame suffered by her." (Madan Gopal Kakkad vs Naval Dubey And Anr on 29 April, 1992)

"What is a voluntary consent and what is not a voluntary consent depends on the facts of each case. In order to appreciate the testimony, one has to see the factors like the age of the girl, her education and her status in the society and likewise the social status of the boy... in case a poor girl placed in a peculiar circumstance where her father has died and she does not understand what the consequences may result for indulging into such acts and when the accused promised to marry but he never intended to marry right from the beginning then the consent of the girl is of no consequence and falls in the second category as enumerated in Section 375 – 'without her consent'." (Yedla Srinivasa Rao vs State Of A.P on 29 September, 2006)

There is no reason to believe that the context of rape will suddenly disappear from judicial consideration. It is quite possible to have gender-neutral laws without decontextualizing rape.

ii. The argument of misuse and victimization

The second aspect of the argument is that gender neutral laws will be misused to falsely accuse women. Agnes (2002) writes,

"A gender-neutral rape law would open up avenues for inflicting even greater trauma and humiliation to an already marginalised section [women] and hence defeat the very purpose of reform."

Victims of female-on-male rape, after describing their rather disturbing experiences, write on reddit¹⁵:

1. "I have never spoken to anyone about it, or how it has affected me. Never spoke to either of those people again either, despite their attempts to apologise in person (and later to "just forget it and be a man"), and justify their actions. I just couldn't

¹⁵Available at

http://www.reddit.com/r/AskReddit/comments/v73r4/men_who_have_been_raped_by_women_can_you_tell_us/ Retrieved on 11/07/2013.

talk to them without feeling like my shame would bring me to unmanly tears, and that it would be a further humiliation in an already foreign situation.”

2. “I didn't do much of anything for 3 months. My grades dropped, I felt sad all the time, and I wasn't eating. I hated myself for letting it happen, I was pissed off that someone would violate me. I reported the incident and was basically told "men can't get raped, don't let her back in your house." She did not get in trouble, she did not have to have a disciplinary review by the school, it wasn't taken seriously. This whole thing happened about in [October] of 2010 and I'm just now getting my confidence back.”
3. “I got home and cried. I cried for days. I was, and still am ashamed of what had happened to me. I'm a man. I should have been able to stop her. I shouldn't have her take down my pants. I know it was my fault on some level.”
4. “After some time trying to come to terms with it I tried telling a couple of people close to me. This wasn't received very well. Basically I wasn't believed at all. One issue was that this girl was very very physically attractive - the girl that all the guys wanted. So the response was basically "You wish, you should be so lucky" sort of thing.”

These stories are not intended to be evidentiary, but indicative. Why is the fact that male victims of rape face enormous social stigma so difficult to conceive?

It is true that were men to maliciously start accusing women of rape, women would have to face unnecessary harassment. But for this to happen, men must accuse women of rape, and it seems like most commentators on this issue fail to appreciate just how difficult it is for men to admit to being raped. *Rape As A Method of Torture* (Peel, 2004) finds,

“Men find it very difficult to disclose rape, and they will avoid talking about it if they can... Even during the therapeutic process, the rape may only be disclosed relatively late, once the client has complete trust in the therapist, and almost certainly there are men who never disclose rape... Men who have been raped are often full of self-blame and self criticism, and believe that others will see them in the same way, and this inhibits them from disclosing the experience.”

While this report is about male-on-male rape specifically, there is evidence to suggest that men are extremely unlikely to report any kind of rape and even that men are far less likely than women to report rape. (Scarce, 1997; Forman 1982; Riccardi, 2010; Rentoul and Appleboom, 1997; RAINN, 2006.) Forman (1982) finds that about 90-95% of men who are raped do not report it.

Further, interviews with the police show that even if a law was in place, they would be reluctant to register a case of female-on-male rape. A female constable¹⁶ very categorically stated that a male victim (even if the perpetrator were male) would be sent for a medical examination before a complaint was registered while the procedure is the opposite for female victims.

Menon (2004) is concerned that gender neutral rape laws will be misused in the same way that domestic violence laws have been. What is surprising is that Menon acknowledges that sexual “performances” to which people do not consent are “traumatic in a way in which

¹⁶ At the Hauz Khas Police Station, New Delhi in a personal interview with the author.

other encounters are not." If the experience of rape is unlike any other physical assault, why must the ability to complain against rape be equated with the ability to complain against domestic violence?

The "social sanction awarded to aggressive male sexuality" that Agnes (2002) herself talks of holds a clue to how society really views rape and gender. It is helpful to look at societal attitudes towards rape as not all-men-against-all-women, but as a more complex judgement about gender roles. Amherst (2010) explains this attitude:

"...both men and women can still be persecuted for not conforming to gender stereotypes. Not only does society's persistence in equating "feminine" with "inferior" result in continuing discrimination against women, it also results in discrimination against men perceived to have transgressed masculine norms."

Rumney (2007) expresses concern that feminist critics fail to acknowledge the effects of rape on male victims,

"It is somewhat ironic that feminist critics of gender neutrality (rightly) criticize the legal process for failing to properly address and understand the experiences of female victims, yet they make the same mistake in their analysis of legal responses to male victimization."

Thus, if the legal process has failed to get female victims justice, it has failed male victims even more. An imperfect legal system and the stacking of odds against female victims cannot be cited as reasons to not introduce gender-neutral rape laws.

Gender-neutral rape laws and women

We have seen that there is concern that making rape laws gender-neutral will lead to the “decontextualization” of rape in the judiciary. However, it is very likely that gender-neutral rape laws will actually inform the judicial debate better; that in making a statement about male sexuality, it will contribute to the understanding of rape in ways that are beneficial not only for men, but also for women.

i. Can gender-neutral rape laws help women? A hypothesis.

I have mentioned the findings of Hartwick, Desmarais and Hennig (2007) about the belief in male sexual accessibility being predictive of male sexual victimization. The authors also find that women who believe that men constantly want sex also were more likely to be sexually victimized. The authors explain these findings such:

“Consistent with some past research (Clements-Schreiber et al., 1997), a belief in men's sexual accessibility predicted women's experience of sexual coercion such that a stronger belief in such accessibility was associated with higher rates of coercion... It is possible that women who endorse the traditional male stereotype are more likely to believe that their own lack of desire does not warrant resistance relative to a man's higher sexual needs, or that resistance may be somewhat futile against a man's indomitable desire for sex. The link between belief in men's sexual accessibility and sexual coercion is compelling but an explanation of the full gender-based process that underlies our results will require further investigation as our explanations remain tentative.”

Socially, if the principle that men do not constantly want sex is recognized by men and women, female victimization might decrease. But this seems like a leap of faith, and the evolution of judicial understanding of rape seems like a more realistic result. When laws are gender-neutral, consent rather than consequences occupies a central position in rape cases. Also, since the law recognizes that being a man does not automatically imply always wanting sex, certain assumptions about male *perpetrators* can also be challenged. For example, the assumption of “men will be men” in rape cases will not hold if the law sees men and women as deserving of equal rights of consent to sexual activity. This hypothesis, of course, needs to be tested; but it is important to realize that having the same rape law for men and women need not lead to the victimization of women – it may even empower them.

ii. The framework of consent – benefits and constraints

Consent is not the be-all and end-all of rape: sometimes consent is given under duress; sometimes it is given under misconception; sometimes sex is consented to because not doing so has enormous social and economic costs for the victim, and so on. The lack of resistance and even the presence of overt consent do not always indicate that rape has not taken place, and the law recognizes this. Thus consent is a tricky part of rape; but what we do unequivocally know about it is that when sex happens without consent, it is rape. Essentially, consent is not the only way to look at rape, but it is an important way.

Were consent to occupy a more important position in rape cases, it can be said that it would lead to more benefits than costs: for example, it will become more difficult to deliberate about whether a woman means yes when she says no, or whether marital rape is rape at

all, or whether homosexual rape can be brushed under the carpet of “unnatural sex” to which one cannot legally consent. An advantage of gender-neutral rape laws is that they afford importance to consent without removing the context and consequences of rape from consideration.

Naming and the law

How might rape be defined within legal terms? Is one kind of penetration worse than the other? Should we not talk about rape at all, and instead use the term “sexual assault”?

For these questions I find myself defending the current law. It includes different kinds of penetration, not just penile-vaginal penetration. There is no reason to presume that penile-vaginal penetration is somehow worse than penile-anal penetration or even other kinds of sexual penetration not involving the penis. One can argue that penile-vaginal penetration risks pregnancy and the breaking of the hymen, but that again is looking at rape through its consequences, the dangers of which have already been explained. Colleen Hall finds that traditional rape laws exclude other kinds of penetration with no logic or justification. (Rumney, 2007 citing Hall 1988) It is safe to argue that the law must keep within its ambit all kinds of forced sexual penetration.

The second question is that of naming: must the rape law be replaced with a sexual assault law? It is important to consider that the naming of the offence is crucial – for example, Rumney (2007) writes:

The idea of labeling or naming abusive acts as rape leads to another issue—the relationship between the lack of societal recognition of male rape and institutional neglect of the problem. The historic failure of the legal process in most jurisdictions to recognize rape outside the male-on female paradigm may have also contributed to the failure of society to acknowledge male sexual victimization.

For male as well as female victims, it is important to identify the crime as rape, not just as an assault that happens to be sexual. As Menon (2004) notes, forced sexual experiences are distinct from other forced experiences. Estrich (1987) also finds that female victims do not like their experiences being classified as simply sexual assaults and not as rape. Naming also denotes acknowledgement of the seriousness of the crime. Other crimes, e.g., sexual harassment and stalking, that are not quite rape but are sexual in nature, are covered in law. There is a need to make rape laws gender-neutral while retaining the seriousness of the crime.

Conclusions

1. Male rape is far too prevalent in India to be termed as an anomaly or a freak incident. By not having gender-neutral rape laws, we are denying a lot more men justice than is commonly thought.
2. Rape does affect men adversely. Even if it may not have the exact same consequences for men and women, looking at rape purely through its consequences is a dangerous approach. Rape is criminalised not because it takes away a girl's virginity or her honour, but because it is an attack on the bodily integrity of the person.
3. Gender-neutral rape laws are extremely unlikely to be used against women just to harass them. The costs of social stigma and ridicule are much higher than the benefits of humiliating a woman.
4. Before rape laws are made gender neutral, homosexuality must be effectively decriminalised. As Kapur (2013) writes,

“Criminalising non-consensual sex regardless of gender can only work if sexual minorities are granted the right to have consensual sex in the first place. Otherwise, such a provision is likely to be applied to further harass sexual minorities who are not recognised as citizens entitled to rights, but continue to be viewed through the lens of contamination and deviancy, to be criminalised and stigmatised.”

5. Structural analysis is important to understand rape, but it excludes a great deal of sexual coercion. If structural analysis must be employed, it must be acknowledged that stereotypes about both male and female rape exist and affect how men and women get justice.
6. A gender neutral rape law must still in essence be a rape law and not simply a sexual assault law, due to the importance of naming and acknowledgement of the seriousness of the offence.
7. It is possible that gender-neutral rape laws will afford a more central position to consent (because if there is something common across the rape of all genders, it is the lack of consent), and by doing so, it moves the rape discourse away from consequences and honour to violation and disregard for bodily integrity. In this way gender-neutral rape laws may actually leave women better off.

References

- A, Divya. 2010. Can A Woman Rape A Man? *The Times of India*, 28 March.
- Abdulali, Sohaila. 1983. I fought for my life...and won. *Manushi*.
- Agnes, Flavia. 2002. Law, Ideology and Female Sexuality. *Economic and Political Weekly*: 844-847
- Amherst, Michael. 2010. Rape is not just a women's issue. *Guardian*. 17 March.
- Anderson, Peter, and Cindy Struckman-Johnson, eds. *Sexually aggressive women: Current perspectives and controversies*. Guilford Press, 1998.
- Banerjee, Sreenanti. 2013. Sexual Violence, Consumer Culture and Feminist Politics – Rethinking the Critique of Commodification. *Kafila*, 3 February.
- Black, Michele C., et al. 2010. National intimate partner and sexual violence survey. *Atlanta, GA: CDC. Centers for Disease Control and Prevention*.
- Brownmiller, Susan. 1975. *Against Our Will – Men, Women and Rape*. Penguin Books.
- Carpenter, Simon. 2009. The Psychological Effects of Male Rape. *Counselling Directory*.
- Criminal Law (Amendment) Act*, 2013. New Delhi: The Gazette of India.
- Forman, Bruce D. 1982. Reported male rape. *Victimology*.
- Frazier, Patricia A. 1993. A comparative study of male and female rape victims seen at a hospital-based rape crisis program. *Journal of Interpersonal Violence* 8, no. 1: 64-76.
- Hartwick, Cailey, Serge Desmarais, and K. Henning. 2007. Characteristics of male and female victims of sexual coercion. *Canadian Journal of Human Sexuality* 16, no. 1/2: 31.
- Kapur, Ratna. 2013. The new sexual security regime. *The Hindu*, 5 February.
- Krahé, Barbara, Renate Scheinberger-Olwig, and Steffen Bieneck. 2003. Men's reports of nonconsensual sexual interactions with women: Prevalence and impact. *Archives of Sexual Behavior* 32, no. 2: 165-175.
- Leonard, Tom. 2011. I still love my manacled Mormon: 'Madam Mayhem' Joyce McKinney who kidnapped missionary with mink-lined handcuffs is still defiant as film is made of her life. *The Daily Mail*, 12 August.
- Levin, Roy J., and Willy van Berlo. 2004. Sexual arousal and orgasm in subjects who experience forced or non-consensual sexual stimulation—a review. *Journal of Clinical Forensic Medicine* 11, no. 2: 82-88.
- Levine, Kay L. No Penis, No Problem. *Fordham Urb. LJ* 33 (2005): 357.
- Madan Gopal Kakkad vs. Naval Dubey And Anr on 29 April, 1992

Madukwe, Bartholomew. 2013. Can A Female Commit Rape? It's Difficult For A Man To Be Raped – Prof Itse Sagay. *Vanguard*, 11 April.

Masters, William H. 1986. Sexual dysfunction as an aftermath of sexual assault of men by women. *Journal of Sex & Marital Therapy* 12, no. 1: 35-45.

McKibbin, William F., Todd K. Shackelford, Aaron T. Goetz, and Valerie G. Starratt. 2008. Why do men rape? An evolutionary psychological perspective. *Review of General Psychology* 12, no. 1: 86.

Menon, Nivedita. 2004. *Recovering Subversion: Feminist Politics Beyond The Law*. University of Illinois Press.

Millet, Kate. 1970. *Sexual Politics*. University of Illinois Press.

Moore, Sally. 1975. 'Rape is A Crime Not of Lust, but Power,' Argues Susan Brownmiller. *People*, 10 November.

Msaki, Roman. 2011. When a rapist is a she: the quest for gender neutral law in Tanzania. *From the selected works of Roman Joseeph Msaki*.

Naz Foundation vs. Government Of NCT Of Delhi on 2 July, 2009.

Palmer, Craig T., and Randy Thornhill. 2003. A posse of good citizens brings outlaw evolutionists to justice. A response to Evolution, Gender, and Rape. *Evolutionary Psychology* 1: 10-27.

Polanki, Pallavi. 2013. Delhi gangrape victim: 'Who is the US govt to award her?' *Firstpost*, 5 March.

PTI. 2013. Women's Groups Protest Anti-Rape Ordinance. *DNA*, 4 February.

RAINN. Male Sexual Assault. Available at: <http://www.rainn.org/get-information/types-of-sexual-assault/male-sexual-assault> Retrieved on 20 July 2013.

Raju vs. State of H.P. (2009) 16 SCC 69

Rao, Arundhati. 2012. Author says event says a lot about India's inequality. Channel4News. 21 December. Available at: <http://www.youtube.com/watch?v=tjzl4xAhrao> Retrieved on 20 July 2013.

Reddy, B. Muralidhar. 2013. Despite protests, ordinance of sexual offences promulgated. *The Hindu*, 3 February.

Rentoul, L., and N. Appleboom. 1997. Understanding the psychological impact of rape and serious sexual assault of men: a literature review. *Journal of Psychiatric and Mental Health Nursing* 4, no. 4: 267-274.

Riccardi, Patrizia. 2010. Male Rape: The Silent Victim and the Gender of the Listener. *Primary Care Companion to the Journal of Clinical Psychiatry* 12, no. 6.

Rumney, Philip. In defence of gender neutrality within rape. 2007. *Seattle Journal of Social Justice* 6: 481.

Sakshi vs. Union Of India And Others on 26 May 2004.

Sarrel, Philip M., and William H. Masters. Sexual molestation of men by women. *Archives of Sexual Behavior* 11, no. 2 (1982): 117-131.

Scarce, Michael. 1997. Same-sex rape of male college students. *Journal of American College Health* 45, no. 4: 171-173.

Smt. Sudesh Jhaku vs. K.C.J. And Others on 23 May, 1996

Tang, Kwong-leung. 1998. Rape law reform in Canada: The success and limits of legislation. *International Journal of Offender Therapy and Comparative Criminology* 42, no. 3: 258-270.

Tarkeshwar Sahu vs. State Of Bihar (Now Jharkhand) on 29 September, 2006.

Thornhill, Randy, and Craig Palmer. 2001. *A natural history of rape: Biological bases of sexual coercion*. The MIT Press.

TNN. 2012. Activists oppose making rape gender-neutral. *The Times of India*, 20 July.

Walker, Jayne, John Archer, and Michelle Davies. 2005. Effects of rape on men: A descriptive analysis. *Archives of Sexual Behavior* 34, no. 1: 69-80.

Wilson, Glenn Daniel. *The great sex divide: a study of male-female differences*. P. Owen, 1989.

Yedla Srinivasa Rao vs. State of A.P on 29 September, 2006.

Appendix: Rape laws around the world

The following tables detail rape laws around the world. Some countries that had gender-specific laws also had laws against homosexuality, which has been mentioned in the column called "Comment" in the tables below. Note that:

1. GL refers to graded laws, which typically means that the laws are against "sexual assault" and have different degrees of punishment according to the seriousness of the assault, "sexual assault of the first degree" usually being the most serious.
2. HP refers to the provision of harsher punishment for raping a woman (as compared to raping a man).
3. HC refers to homosexuality being criminalised.
4. DL refers to separate rape laws for men and women, the punishment usually being the same.

Table 1.1 Countries with completely gender-neutral rape laws

<i>NAME OF THE COUNTRY</i>	<i>COMMENT</i>
Australia	
Austria	
Bahamas, The	
Bahrain	GL; HP
Barbados	
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Botswana	
Brazil	
Canada	
Cape Verde	GL
Central African Republic	HC ¹⁷
Colombia	
Comoros	
Costa Rica	
Denmark	
Dominica	HC
Dominican Republic	
Egypt	HP
El Salvador	
England and Wales	
Estonia	
Ethiopia	HP

¹⁷ Public homosexuality is specifically criminalized.

Finland	GL
France	
Gabon	
Germany	
Greece	
Guinea	
Guinea-Bissau	DL
Honduras	
Iceland	
Ireland	GL
Italy	
Jamaica	DL
Kazakhstan	
Kenya	
Krygyzstan	
Latvia	
Liechtenstein	
Lithuania	DL
Luxembourg	
Macedonia	
Mali	
Marshall Islands	GL
Mexico	
Montenegro	
Namibia	
Netherlands	
New Zealand	
Nicaragua	
Niger	
Norway	
Panama	
Paraguay	
Peru	
Russia	DL
Rwanda	
South Africa	
South Korea	
Spain	
Sweden	GL

Table 1.2 Countries with completely gender-specific rape laws

NAME OF THE COUNTRY	COMMENT
Israel	
China	
Bangladesh	
Afghanistan	HC
Albania	
Brunei	HC
Cameroon	HC
Cuba	
Cyprus	
Czech Republic	
Fiji	
Gambia	
Georgia	HC
Ghana	HC ¹⁸
Grenada	
Guatemala ¹⁹	
Guyana	HC
India	HC ²⁰
Japan	
Jordan ²¹	
Kiribati	HC
Laos	
Malawi	
Malaysia	
Morocco	
Nigeria	
Pakistan	

Table 1.3 Countries with partly neutral rape laws

Name of the country	Comment
Armenia ²²	
Bulgaria ²³	

¹⁸ There are provisions against “unnatural carnal knowledge”.

¹⁹ The laws against sexual abuse are gender neutral.

²⁰ While consensual homosexuality is under debate, non-consensual homosexuality is definitely criminalized.

²¹ There are gender neutral laws for "Attacking, by violence or intimidation, the honour of a person."

²² Same-sex rape has harsher penalties than male-on-female rape.

²³ Non-consensual homosexuality is criminalised.

Hungary ²⁴	
Myanmar ²⁵	HC
Philippines	
Scotland	

The following table details rape laws across regions. Please note that CN denotes completely gender-neutral rape laws, CS denotes completely gender-specific rape laws and PN denotes rape laws that are partly gender-neutral:

Table 1.4: Region-wise rape laws

Region	Total countries studied	CN	CS	PN
Sub-Saharan Africa	19	14	5	0
Asia	16	4	10	2
Oceania	5	3	2	0
Latin America	19	15	4	0
Eastern Europe	12	6	3	3
Western Europe and North America	20	19	0	1
Middle East	5	2	3	0

The following tables show a region-wise classification of countries and their rape laws.

Table 1.5: Sub-Saharan Africa

Name of the country	Rape Laws
Botswana	CN
Cameroon	CS
Cape Verde	CN
Central African Republic	CN
Comoros	CN
Ethiopia	CN
Gabon	CN
Gambia	CS
Ghana	CS
Guinea	CN
Guinea-Bissau	CN
Kenya	CN
Malawi	CS

²⁴ Non-consensual sodomy is criminalized.

²⁵ Women can be charged with kidnapping with intention to subject to unnatural lust.

Mali	CN
Namibia	CN
Niger	CN
Nigeria	CS
Rwanda	CN
South Africa	CN

Table 1.6: Asia

Name of the country	Rape Laws
Afghanistan	CS
Bangladesh	CS
Bhutan	CN
Brunei	CS
China	CS
Cyprus	CS
India	CS
Japan	CS
Kazakhstan	CN
Krygyzstan	CN
Laos	CS
Malaysia	CS
Myanmar	PN
Pakistan	CS
Philippines	PN
South Korea	CN

Table 1.7: Oceania

Name of the country	Rape Laws
Australia	CN
Fiji	CS
Kiribati	CS
Marshall Islands	CN
New Zealand	CN

Table 1.8: Europe and North America

Name of the country	Rape Laws
----------------------------	------------------

Austria	CN
Canada	CN
Denmark	CN
England and Wales	CN
Finland	CN
France	CN
Germany	CN
Greece	CN
Iceland	CN
Ireland	CN
Italy	CN
Liechtenstein	CN
Luxembourg	CN
Mexico	CN
Netherlands	CN
Norway	CN
Russia	CN
Scotland	PN
Spain	CN
Sweden	CN

Table 1.9: Latin America

Name of the country	Rape Laws
Bahamas, The	CN
Barbados	CN
Bolivia	CN
Brazil	CN
Colombia	CN
Costa Rica	CN
Cuba	CS
Dominica	CN
Dominican Republic	CN
El Salvador	CN
Grenada	CS
Guatemala	CS
Guyana	CS
Honduras	CN
Jamaica	CN
Nicaragua	CN
Panama	CN
Paraguay	CN

Peru	CN
------	----

Table 1.10: The Middle East

Name of the country	Rape Laws
Bahrain	CN
Egypt	CN
Israel	CS
Jordan	CS
Morocco	CS