

## MENS RIGHTS: A QUESTION OF BIAS

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**BEST CITATION** – SAANJH INUGANTI, MENS RIGHTS: A QUESTION OF BIAS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 6 (1) OF 2026, PG.1099-1102, APIS – 3920 – 0001 & ISSN – 2583-2344

### Abstract

Both men and women have been subjected to offenses of criminal and civil nature. Most of these cases aren't reported, not having a documentation of the clear data on the crimes on men v. women. There has been a significant hike on the cases registered against women lately, leading to implementation of multiple stringent legislations for their protection. However, these laws are biased against men in multiple cases. This article attempts to highlight one of those biases in a particular section of a newly amended law of the British origin- IPC, now the BNS.

**Keywords:** Unique; Introspective; Suggestive; Crisp; Mind-bending.

### I. INTRODUCTION

The Indian Penal Code is a substantive law that lays down what constitutes as a crime. It dates to the 1860's when it was enacted and implemented<sup>2446</sup>. This comes into force alongside CRPC, The Code of Criminal Procedure. A procedural law that lays down the process of investigation, trial, definition of offenses and punishments for criminal cases listed in the IPC<sup>2447</sup>. These two are the primary laws that govern crime in India.

These laws originate from the British era, making them outdated to govern modern-day offenses. They also lack Indian centrism. Keeping these in mind, the government of India, had very recently amended them. They were introduced in the Lok Sabha by the Honorable Home Minister, Shree Amit Shah on 11<sup>th</sup> August, 2023. Facing immense criticism and objection, these bills were re-introduced with more changes on December 12<sup>th</sup>, 2023. The lower and upper houses passed the bill later that month followed by the President's assent. They formally came into effect on July 1<sup>st</sup>, 2024<sup>2448</sup>.

### II. THE LAW

While the new laws bring amendments in the multi-sphere, they lack in eliminating biasness towards men as in the previous legislations and continue to make it women-centric. Narrowing it further, one such major flaw is in the section of rape in the BNS.

Under Section 375 of the IPC and Section 23 of the BNS, a man is said to commit rape if he<sup>2449</sup>:

- a. Penetrates his penis to any extent into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; or
- b. Inserts any object or a part of the body into the vagina, urethra, or anus of a woman or makes her do so with him or any other person; or
- c. Manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus, or any part of the body; or
- d. Applies his mouth to the vagina, anus, urethra of a woman.

<sup>2446</sup> The Indian Penal Code, 1862

<sup>2447</sup> The Code of Criminal Procedure, 1974

<sup>2448</sup> The Hindu

<sup>2449</sup> The Indian Penal Code, 1862/ Bhartiya Nyaya Sanhita, 2024

Under the circumstances falling under any of the following descriptions<sup>2450</sup>:

- A. against her will;
- B. without her consent;
- C. 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;
- D. 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;
- E. 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;
- F. with or without her consent, when she is under eighteen years of age;
- G. when she is unable to communicate consent.

### III. THE PROBLEM

In both versions, what remains same is the law being gender biased against a male. It fails to recognize that women too are capable of committing rape on men with the same intensity if not more. This is because biologically women do not have the means to penetrate and it is misinterpreted that forceful penetration is more heinous than forcing someone to penetrate you<sup>2451</sup>. As per the code, acts of penetration or insertion are required to constitute the offense as a rape. While the definition specifies 'penetration of the penis, insertion of objects (other than the penis), oral acts etc.,' it is important to understand that the word 'penis' may not always be natural. It can

be an artificially inserted penis by woman to rape a man or the penis of a man penetrated forcefully by a woman. Thus, it may not necessarily be 'his' penis in all cases of rape. At least not willfully.

Men have no legal relief in India if they are raped because it is a common belief that there are no instances of women raping men. It is not a matter of male or female but about understanding that these offenses can happen to anyone, anytime irrelevant of gender or sex. If a man was subjected to rape in India, what legal remedy would he have? The IPC nor the BNS cover the possibility of another sex's bodily integrity being violated other than a woman. Men can seek relief only under section 377 of the IPC<sup>2452</sup>, "unnatural sex" which is surprising because forceful sex against men is not unnatural or uncommon, only statically less in number as compared to cases against women. However, even under this clause, men would face multiple challenges as the law wouldn't recognize a male perpetrator and a male victim in acts of rape let alone sex and if a male victim and a woman perpetrator are in the picture, then it becomes more difficult for the man to prove his innocence.

### IV. CASE STUDIES

#### A. The Jalandhar Rape Case<sup>2453</sup>

A man from Jalandhar who has recently alleged that four women, all of whom appeared to be in their early twenties had abducted him in a car after spraying some chemical in his eyes only to later drug him and sexually abuse him inside a forest area. It is being further added that he was dumped by the four women later at a secluded spot, late in the night. The case has not been reported to police, but the victim has narrated his ordeal to local media and said that he is married with kids. According to him, his wife asked him not to file a complaint since he came back alive and that is what mattered to the family, reports are saying. The man alleged that

<sup>2450</sup> The Indian Penal Code, 1862/ Bhartiya Nyaya Sanhita, 2024

<sup>2451</sup> Legal Service

<sup>2452</sup> Maps of India, May 15<sup>th</sup>, 2015

<sup>2453</sup> Firstpost, December 4<sup>th</sup>, 2022

the kidnapping was done for sexual motive. While narrating the whole incident to media persons, he has stated that he works as a labourer in a leather factory. On his way home, a white car stopped near him on the Kapurthala road in which four girls were sitting. The girl driving the car asked for an address written on a slip which she gave him. As soon as he started looking at the slip, the girl allegedly sprayed something in his eyes, after which he could not see anything and eventually fainted. Next, as he gained consciousness, he was sitting with them in the car, blindfolded with hands tied behind his back. After this the girls took him to an unknown place where they allegedly drugged him. He alleged that they were drinking alcohol and forced him to drink as well. After this all four took turns to rape him, the man claimed. Later at around 3 AM, the girls left from there leaving him blindfolded and with hands tied.

#### **B. Rape of Minor boys across States<sup>2454</sup>**

In 2014, police in Muzaffarnagar, UP, registered cases against three inmates of a government-run protection home, for allegedly “sodomising” a fellow inmate, and a Madrasa teacher, for similar sexual assault on a 12-year-old student in Shamli. A further slew of cases was reported in 2017 in Mumbai, when a 13-year-old boy was raped in Powai and another 16-year-old schoolboy was raped, blackmailed, and physically assaulted by 15 other boys for a year, the shocking incident confirmed by a medical examination.

#### **C. Raped in a Catholic Church<sup>2455</sup>**

In 2009, an 18-year-old Zimbabwean man was seized by three women outside a Shopping Centre and driven to a Catholic cathedral where they locked him in a room. He was forced to have sex with one of his kidnappers repeatedly while the others watched and cheered him on. Afterwards, the daring women phoned the wife of the man’s employer and told her that the victim was safe and they should not worry about his whereabouts. The following

morning the three women forced the young man into their vehicle and dumped him at the same Shopping Centre where they kidnapped him from. Though the man made a report at a Police Station. No arrests have been made till today.

#### **D. Raped in a Garage<sup>2456</sup>**

A the 31-year-old unidentified South African man said that he was abducted by three women and repeatedly sexually assaulted over four days. According to him, he was standing at the side of a road to get a lift. When the three women, who were traveling in a BMW, offered him a lift to his destination. On entering the car, they drove to a garage where they pulled a gun and blindfolded him. They got him aroused quickly by forcing him drink a substance from a bottle. The women then took turns repeatedly raping him. After everything, they took his semen and stored it in a plastic bag. The man was found dumped under a bridge the following morning. Police are looking for the three women, but so far, no arrests have been made.

#### **E. Raped in a Car<sup>2457</sup>**

A 25-year-old hitch-hiker, who was travelling to Gweru, a city in Zimbabwe accepted a lift from a group of women. But some minutes into the journey, one of the women produced a pistol as the car parked on the side of the road. The women then forced him to drink a strange liquid which acted as a sex enhancement drug, then they all took turns to rape him. When they were done with him, they dumped him on the road. Following the alleged attack, the victim was unconscious until 10AM the next day when he made a report to the police. No arrests have been made to date.

#### **F. Blackmailed by an Ex<sup>2458</sup>**

A month after the couple broke up, the female begged the man to take her back, upon rejection, she then moved her hand over his crotch. When the man asked her to stop, she blackmailed him to have sex with her or she’d

<sup>2454</sup> Media India Group, October 4<sup>th</sup>, 2021

<sup>2455</sup> TalkAfricana, June 23<sup>rd</sup>, 2016

<sup>2456</sup> TalkAfricana, June 23<sup>rd</sup>, 2016

<sup>2457</sup> TalkAfricana, June 23<sup>rd</sup>, 2016

<sup>2458</sup> Mamamia, April 21<sup>st</sup>, 2017

scream she'd been raped by him. The man quoted, "I'm 6'3 and a big dude, but I have never felt so small in my life." He further added, "I went completely "numb". "I hate her," he concluded. "I hate myself for being kind, and I hate people that say guys can't get raped. I have never felt so humiliated in my life."

These case studies across the world depict that just because a man has an erection, is in the same bed, a partner, was a partner, etc. doesn't mean he has given consent. The myth that men want sex all the time is extremely damaging, these stories demonstrating exactly why. This also proves that men can get raped too and penetration may not always be by the penis of a man willingly or forced by him.

#### V. THE WAY FORWARD

Men are often viewed as the predators rather than the victims due to their masculinity, belief of lacking emotional sensitivity and display in a society that would not accept them if they did show any depth or less 'manliness.' However, this line of thinking has become outdated. Alongside clothes, our mindsets must modernize too. It is important to understand that men too, as humans, feel and need the same as women do. They are only bound by the unrealistic social standards and lack of mediums in approaching to project. Moreover, an offender may not always be physically powerful than the victim. They can come in all shapes and sizes, like a victim. What is necessary is a corrupt mind to think of an offense and the tactful skill to commit it on a person of convenience.

There are more registered cases of women crimes than men because there is no way a man can approach an authority for any bodily crimes against them. Either the law or the people would reject the notion of it to biologically happen.

Thus, it's high time we accepted that forceful penetration can happen both ways, not always mediating via penis. Laws need to be formulated in a gender-neutral manner. This article, only points out one section of the well-

drafted and amended law over the years that continues to hold the old taboo that, "women can't rape." There similarly exist end number of legislations that are women-centric in nature with no remedy for men. While it was a necessary step to make these laws for the protection of women and rightly so, it should be kept in mind that anyone can be subjected to an offense, irrelevant of sex. To safeguard one, another shouldn't be compromised. An effective step could have been, making the laws neutral while implementing new versions of the IPC and CRPC (BNS and BNSS). However, since that has been done, the Legislature must draft new legislations for protection of men or re-amend the laws to make them flexible for both sexes. A balanced legislation is pivotal in maintaining harmony in the society.