

**UNNATURAL LUST: THE VAGUENESS AND INADEQUACY IN THE
PROTECTION OF MEN AGAINST RAPE IN INDIA AND A
COMPARISON AGAINST THE WORLD**

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ABSTRACT

Rape laws in India have been in question for decades now. While many nations recently have changed their rape laws to gender-neutral, India still lacks any legislative intent on the same. There were significant efforts made after the Law Commission of India in its 172nd report recommended the changing of “women” to “any person” as victims of rape. However, all efforts did not bear any fruit. The law against the rape of males in India is governed currently by Section 377 of the IPC, which criminalizes “unnatural offenses” or gratifying of unnatural lust. There is less clarity as to what constitutes this “unnatural lust” and there is a need to define this for interpretative purposes. This research does a comparison analysis of international norms and practises pertaining to male rape victims in order to provide context. To highlight the differences and similarities, it looks at the legal systems and societal norms in a number of nations. This study attempts to highlight the urgent requirement for legal reforms and social awareness campaigns in India to better protect and help male rape victims through the integration of legal research with a sociocultural viewpoint and a worldwide comparative approach. It adds to the current conversation about gender-neutral laws and the significance of respecting the experiences of all survivors, regardless of gender, while promoting more inclusive and equal legal safeguards globally.

KEYWORDS: Rape, Rape of men, Section 377, Unnatural lust, Gender Neutral Rape Laws etc.

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I. INTRODUCTION

“A murderer destroys the body but a rapist kills the soul.” While it is not unknown that rape is but one of the most heinous crimes to be committed, the question is whether it is gendered or can it escape the bounds of gender, and be applicable to all. In simpler words, who are generally the perpetrators in this particular crime against the body, can they, the men, be victims of rape? If the answer is yes, then do they have a legal recourse to address this. Is the society more concerned about men doing rape or the existence of rape in the society in general?

The concept of rape is not restricted to what it is according to the law in India and various other countries. It is not necessary that men are always perpetrators and women the victims. Sometimes it may be the opposite, and sometimes both may be from the same sex, if not gender. This debate is not new, and has been going on for ages, with regard to the Indian scenario and how rape laws should be gender-neutral. *Sakshi v Union of India*, there were instances submitted in which neither 375 nor 377 would apply and women had no resources and it would just take a limited form of assault or criminal force”. Similarly, rape of men will also either fall under 377 or not have any remedy except mere assault or criminal force. Why shall sexual offenses against men be punished for only a mere assault?

The notion that “a woman cannot bring about sexual intercourse with a male against his will” is false. Men can sustain erections without being sexually aroused. In the same way that female rape victims can experience ‘vaginal lubrication and orgasmic responses’ during their rape, there have been reports of males ejaculating during forced experiences. A boy was made to orgasm against his will by his girlfriend in England. Thus, men can sustain erections out of fear as well. According to data brought by Centre for Disease Control (USA) 2015, 1 in every 14 men had in their lifetime forced to penetrate someone (completed or attempted), while in 2010 it was 1 in 21 males. While there is a lack of data in India, the society is not as progressive and the statistics would be highly similar except for the fact that in India it is an issue of masculinity and the society has a stereotype, and would mock the man if he were to complain of getting raped.

So far as data for unnatural crimes in India is concerned, according to the National Crime Records Bureau of India, unnatural offenses in the years 2019, 2020, and 2021 were 997, 826 and 955 respectively. This is concerning because due to social stigma, the male victims do not even report what happened to them and this can be undone by stringent laws that are gender-

neutral. There is a clear need for rape laws for men, or else their voices will never be heard in India. In *Sudesh Jhaku v KC Jhaku*, the court said that sexually assaulted men should be given the same protection of the law as given to female victims. The existing remedy that section 377 provides is very vague because of the “unnatural” lust and its lack of definition. It also includes sexual crimes against animals (bestiality) and necessitates penetration. The need of the hour is to, like many other countries, make rape a gender-neutral concept and punish all equally for the crime.

Rape is an abhorrent crime that transcends gender barriers and destroys lives and communities all around the world. The victimisation of men is a disturbing and largely unreported reality, despite the fact that it is frequently acknowledged as a crime primarily committed against women. The protection of men against rape continues to be a critical and under-addressed issue in India, a nation that struggles with complicated socio-cultural factors and legal complexities. In order to examine the ambiguity and inadequacy in protecting men against rape within the Indian setting, this study examines the idea of "Unnatural Lust" while also doing a comparative examination of international attitudes and legal frameworks. With definitions, protections, and support systems mostly catered to their experiences, the legal structure around rape in India primarily concentrates on female victims. Male survivors are exposed because to this disparity, are underrepresented, and have few legal options. Male rape victims frequently encounter resistance, discrimination, and a lack of adequate support while reporting their experiences due to the ambiguity and vagueness of Indian rape legislation.

This research compares the legal systems and public perceptions of male rape victims in a few other nations in order to highlight the deficiencies within the Indian context and provide potential fixes. By contrasting India's strategy with international norms, we hope to draw attention to both the particular difficulties experienced by male survivors in India as well as commonalities that can guide advocacy and policy activities. Beyond a legal examination, this research investigates the sociocultural elements that sustain gender stereotypes and prevent Indian society from recognising and assisting male survivors. It discusses the ubiquitous stigma associated with male victimisation as well as the challenges of reporting, demanding redress, and getting help in a culture that frequently ignores this kind of suffering.

This stud aims to highlight the urgent requirement for comprehensive legal reforms and societal awareness campaigns in India through a multidimensional approach that includes legal analysis, sociocultural examination, and worldwide comparison. It promotes a more equal and

inclusive legal system that acknowledges the experiences of all survivors, regardless of gender, and places India in the context of the larger global conversation on gender-neutral legislation and the defence of males against rape.

II. RESEARCH METHODOLOGY

The Researcher has conducted predominately doctrinal study to see whether the legislators and the judiciary have understood the topic of the unnatural lust: the vagueness and inadequacy in the protection of men against rape in India, and a comparison against the world. The secondary sources of law, such as authoritative and peer-reviewed journals articles as well as books related to and relevant in regard to this topic, has been relied on and consulted. Published work on the topic has also been reviewed as well as national constitutions, legislation and policies on judicial process. The Researcher has analysed the supreme court and High Court decisions to see how the text of the law has been actually interpreted. The material collected has been analysed and evaluated descriptively.

III. Defining Unnatural Lust

LUST: The Oxford learner's Dictionary as well as the Cambridge Dictionary describes lust as "very strong sexual desire, especially when love is not involved". In rape cases, before the act is done, the courts have though not defined lust, but mentioned that the act was done in pursuance of his lust, which means lust is the desire to get someone to sexually involve with the person.

UNNATURAL: What constitutes the word unnatural? Black's law dictionary defines Unnatural offense as an "infamous crime against nature". Further, Crime against nature in the same dictionary is defined as: "sodomy and "bestiality"; "a connection between a human being and a brute of the opposite sex." It is also defined as "the perverted act of uniting the mouth of one participant with the sexual organ of the other, with a view of gratifying the sexual desire, and a mere kiss or lick of the private organ, even though lewdly done, is not a "copulation" within the statute.

INFAMOUS CRIME: Black's Law Dictionary says that "by the Revised Statutes of New York the term "infamous crime," when used in any statute, is directed to be construed as including every offense punishable with death or by imprisonment in a state prison, and no other."

A DRAFT DEFINITION: An act done to *gratify unnatural lust* would include an act done in pursuance of a strong sexual desire for someone which would be heinous and would include in the context of IPC, majorly sodomy and bestiality. However, it would not include anything that does not amount to penetration as clarified by section 377. The question of consent has not been addressed in this context by the law, per se.

The Delhi High Court in *Kamal v State*, in an attempt to define unnatural lust under 377 said, “Therefore, in our opinion, ‘carnal intercourse against the order of nature’ appearing in section 377 must have the following ingredients:

- i. It must have to do with flesh and sensuality, namely, it must be carnal;
- ii. There must be intercourse between individuals, without restricting it only to human-to-human intercourse;
- iii. It must involve penetration other than penile-vaginal penetration, since by the very nature, intent, and purpose of section 377, it must refer to an unnatural act, such as ‘penile-anal penetration’, ‘digital penetration’ or ‘object penetration’

Evidently, this defines the scope of the remedy that “unnatural lust” and Section 377 could be able to provide for men. However, the high court further said that it was nearly not possible and “even desirable” to describe this exactly. However, in this case the focus was defining this for a minor.

IV. Genesis of Unnatural Lust in Indian Law

Buggery law, which inspires Section 377 of IPC, has its genesis in the buggery laws of England which further have their genesis from Christian laws. Similarity is found in Jewish and Muslim laws as well. “If a man also lies with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death.

Section 377 of the current IPC reads: “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 a 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 offence described in this section”

Macaulay's Draft Penal Code in 1837, prepared by the first Indian Law Commission had two sections under the heading "OF UNNATURAL OFFENCES": "Sec361. Whoever, intending to gratify unnatural lust, touches, for that purpose, any person, or any animal, or is by his own consent touched by any person, for the purpose of gratifying unnatural lust, shall be punished with imprisonment of either description for a term which may extend to fourteen years and must not be less than two years, and shall also be liable to fine. §362. Whoever, intending to gratify unnatural lust, touches for that purpose any person without that person's free and intelligent consent, shall be punished with imprisonment of either description for a term which may extend to life and must not be less than seven years, and shall also be liable to fine.

This was later altered and turned into what we have today as section 377 of the present IPC.

Robert Wintemute, contends that this was worse than English buggery laws according to buggery act 1533, because it criminalised mere "touching" for the purpose of "gratifying unnatural lust", which expanded the scope, although it was good in the way that removed the death penalty.

In my opinion, the 1837 draft is though greater in ambit, a better drafted section. It considers *consent* as an essential factor, since back then in 1837, which is still today the need of the hour, while the present 377 does not and the Supreme Court had to read it into the section to decriminalize same-sex consensual intercourse. In my opinion, the criminalizing of "touching" for gratifying unnatural lust also seems logical, not according to 1837 because of the prevalence of buggery laws, but today. So long as the ambit of gratifying unnatural lust and what constitutes it keeps evolving and is properly interpreted, this seems like a rather progressive law. If the purpose and language is not to criminalize per se sodomy but acts in such pursuance without consent, it could be completely relevant.

So, the stress should have been on interpreting unnatural lust and liberalizing that. Rather the drafters removed the aspect of consent and narrowed the ambit to penetration only, saying that criminalising "touching" would be too wide an ambit making 377 what it is today which wasn't the need of the hour. They probably deemed it irrelevant to keep the consent aspect because buggery, in general, was criminalized then. The then not added criminalization of inappropriate touching was added in 2013 via an amendment to Section 354 adding 354A, which punishes "physical contact and advances involving unwelcome and explicit sexual overtures". Though

this is specific to women, had the draft section been opted for, it would act as a gender-neutral law.

An explanation therefore could have been appended to this section for defining what is unnatural and could have progressively defined it.

Since the current Section 377 criminalises sodomy per se. It even criminalises consensual sexual contact between individuals of the same sex. In the case of *Navtej Singh Johar v Union of India* the Supreme court decriminalised this, and allowed consensual sexual relationships amongst the same sex. Though through judicial pronouncement, but buggery law was finally done away with in India, and fairly so, as England and the UK themselves have done away with this in their present rape laws, as discussed later in the paper.

V. UNNATURAL LUST vs. RAPE

GENDER NEUTRAL DEFINITIONS OF RAPE- INTERNATIONAL COMPARISON

Rape, under the laws of different countries, has different definitions. In the Indian Context, what constitutes rape is defined under Section 376 of the IPC. While unnatural lust as defined above would restrict itself to sodomy and bestiality and the like, necessitating penetration, rape does not. 375 (d) also includes applying of mouth to the “vagina, anus, urethra of a woman” or making the woman do so by someone else. The provision of rape also necessitates consent and punishes for rape in 7 cases, all of which describe consent not taken or which was not free. This provision on the other hand does not talk about consent at all, and in general, criminalises such “unnatural” sexual activities.

In the UK rape is defined as when “he intentionally penetrates the vagina, anus or mouth of another person with his penis”, and it is without consent. So, the laws in the UK are still not completely gender-neutral and a woman can’t be held liable for rape there. Penile penetration is still a requirement to constitute rape.

United States, defines rape as “The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” This seems like a more progressive definition. Since this would include

what section 377 has to offer as protection to men so this would equate unnatural lust to rape only in the context of non-consensual males, if we leave out the bestiality aspect behind.

Scotland replaced the term “women” with the word “person” in its rape laws under Sexual Offences (Scotland) Act, 2009. China too, recently widened its definition of rape. In India, Pakistan and such other countries, however, it is still a crime with gender attributions.

The *U.N. Handbook for legislation on violence against women* recommends replacing the offenses of rape and “indecent assault” (UK) with a broad offense of sexual assault. It also asks to “remove any requirement that sexual assault be committed by force or violence, and any requirement of proof of penetration.” It incorporates the widest definition including rape and all sorts of sexual violence equivalents.

According to the National Crime Victimization Survey, rape is “the unlawful penetration of a person against the will of the victim, with the use or threatened use of force, or the attempt of such an act.”

SO, IS UNNATURAL LUST ANY DIFFERENT FROM RAPE OR THE SAME AS ONE THING?

We know for a fact that section 377 is legal recourse when there is rape against men. For example, in a recent case, an auto driver had sex with a drunk passenger who was a man and had been arguing about the fare. This was without consent and so he was charged under Section 377 along with other sections.

However, Unnatural lust would include bestiality, while rape would generally consider humans only. Moreover, unnatural lust is confined in the Indian context to penetration under 377. However, rape is not confined to just penetration only.

Thus, it can be concluded that unnatural lust includes some instances like man-to-man rape and similar other forms of rape, but has other aspects like bestiality which is completely different from the rape concept, and thus rape and Unnatural lust are not one and the same.

VI. INDIAN EFFORTS TO MAKE GENDER NEUTRAL RAPE LAWS

Interestingly, there have been significant efforts to amend the existing rape laws and make them gender neutral. All of them, however, have failed. It started off with the case of *Sakshi v. Union of India*, where the petitioner, an organisation for women’s rights, filed a writ petition asking for a declaration that “sexual intercourse” in section 375 should include all forms of penetration

including penile-vaginal, penile oral and penile-anal, and also object anal penetration, and that all such cases be registered. The court said this could not be done by judicial pronouncements and then it was referred to the law commission. The then law commission came up with its 172nd report, in which it suggested to replace the word rape and redraft the section using “sexual assault” as also recommended by the UN handbook, and it also substituted “women” to “any person” making it gender neutral and expanding the ambit as required by the Sakshi case. This recommendation was a huge step in neutralizing gendered rape laws in India. Criminal Law (Amendment) bill (2012) was introduced and the Justice Verma Committee as well to review the amendments to criminal law so proposed, In the aftermath of the Nirbhaya case and the Sakshi case. The Criminal Law (Amendment) Ordinance 2013 came into place. This ordinance suggested the same, to replace “women” with “any person”.

Justice Verma Committee in its report discussed whether replacing rape with a wider offense of sexual assault was feasible. They said that the advantage of such an approach would be lack of the difficulty to define penetrative and non-penetrative offenses and will cover a full range of offenses that the definitions at the moment fail to cover, However, they also felt that the term rape had a higher degree of moral and social “opprobrium” which the words “sexual assault” lacks. Therefore, the efforts to morally condemn such acts could be diluted.

The ordinance was adopted, but because of widespread opposition by women and society organisations, the ordinance had to maintain status quo and could not amend the word “women” to “any person”. In this quest for gender neutrality, the feminist side seems to have the most problem with neutrality in perpetrators. They claim that there have been absolutely no cases where women have raped men in India in non-custodial situations, and thus it is “not based on any empirical evidence”. Since law should be based on profound reasons, the feminists heavily opposed this proposition.

However, this may not be the case. In 2015, a 16-year-old boy was assaulted sexually by the mother of his friend. According to reports, the boy had gone to meet his friend in Mumbai, and the mother spiked the boy’s drink. He lost consciousness and she stripped him and forced herself upon him, and also recorded it. She blackmailed him and kept calling him to the house for the next three months and threatened to sue for rape if he told anyone.

There are cases when the woman has made the man unconscious, tied him, and when he couldn't resist, forcibly touched their genitals and forced them to orgasm. There are also cases of "forced to penetrate". Men can sustain erections out of fear as well. This is discussed in detail above. Therefore, the Criminal Law (Amendment) Act 2013 was adopted but without the gender neutrality aspect.

VII. BHARATIYA NYAYA Sanhita Bill, 2023

What is surprising is that a bill that aims to completely replace more than a century old Indian penal Code, still sticks to the same definition of rape and does not make rape laws gender neutral. Whatever has been so far discussed with respect to Section 375 of the present IPC remains the same, except of course the section number, in the BNS. This is disappointing as one would hope that a complete new criminal law framework would aim to give some rights to men at least, with respect to rape. What is even more surprising is the BNS gets rid of section 377 in totality. Thus, robbing off men from the only remedy they had against rape of men by at least men perpetrators that involved penetration. While the new bill adds a section 69 which punishes deceitful means and misrepresentation and false promises for the purpose of sexual desires, it fails to provide basic protection against rape to men.

VIII. Conclusion and Recommendations

While the notion that it is biologically not possible for women to rape men has been proved to be false, and the need for gender neutral laws has been justified, it is high time India introduces a law, or amends the current law to make rape gender neutral and also not let a section which criminalises bestiality or sexual crimes against animal be the only remedy for a man who is victim of rape tale legal recourse to. While there seems to be a difficult road to find solutions to this, a way forward would be to amend the bill newly introduced in the parliament, the BNS, and include "any person" in the rape provision to make it gender neutral. Since the matter is pending in the parliament, this is the easiest and best time to implement the 172th law commission report. If the social conditions do not permit making women the perpetrators of rape, at least the recognition of male-to-male non-consensual sex in an explicit provision is required, although there is no reason to believe that social conditions don't allow such implementation.

Another solution could be to Implement the Criminal Law Amendment bill 2019, which was introduced by KTS Tulsi in the Rajya Sabha. This bill interestingly not only makes Section 375 gender Neutral, by replacing the first word “a man” with “any person” but it also makes Section 354 A gender neutral by inserting “any person” there instead of man. Moreover, it also adds a separate section, “Section 375 A”, which criminalizes sexual assault as a separate offense which is not there in the present law. This section criminalizes touching the genitals, anus or breast of a person, or making other people touch the genitals, anus, or breast of a person without their consent, except for medical purposes. While the addition of 375A here can be debated upon, this is a fair remedy for 354A and 375.

Prevention of Children from Sexual Offences is a gender-neutral law. It has offences like aggravated sexual offenses and aggravated penetrative sexual offenses. The definition of aggravated sexual offenses under section 7 includes ‘being made to touch’ as well but for a child. Similar provisions could be added to the IPC, replacing “being made to” with being forced to touch. Thus, this would encompass a vast variety of sexual offenses amounting to male and female rape or just rape in general.

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