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Rape and Sexual Offenses

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Rape and sexual offenses are widespread around the world, with devastating psychological and physical consequences for millions of victims each year. Overwhelmingly, men perpetrate sexual offenses, although women commit some of these crimes as well. In the United States, one in five women has been forced to have sexual intercourse against her will at some point in her life. Worldwide, rape rates are difficult to trace and compare, but in 1995, the United Nations Conference on Women (Beijing) urged all countries to combat sexual offenses against women and girls in their own states.

Experience of Rape

Stereotypes about rape abound. Many believe that those who rape must be mentally insane. Most rapists, however, score normally on standard psychological assessments. Many believe that strangers usually commit rapes. In fact, acquaintances and intimates commit the vast majority of rapes. Perhaps the most intimate kind of rape, marital rape, is itself an enormous problem. Many believe rape is usually interracial. In fact, rape is overwhelmingly intraracial, except when it is used as a weapon of genocide or ethnic conflict.

Many believe that men cannot be raped. In fact, the sexual abuse of boys is widespread. One in seven men and one in three women in the United States were sexually abused as children. Male (as well as female) rape and sexual abuse in prison and other institutional settings are problems worldwide. In addition, men may be raped by other men when they are perceived to be gay or transgendered because they do not fit cultural norms of masculinity.

Many believe rape does not occur unless the offender uses violent physical force or a weapon. The typical rape, however, involves no weapons and little to no physical force. Many believe that rape does not happen unless the victim physically resists her attacker, when in fact victims often suffer physical paralysis and mental disassociation, which cause silence and passivity and prevent them from resisting.

After a rape, victims may suffer many physical repercussions, including unwanted pregnancy, sexually transmitted diseases, and bruises, cuts, or worse. However, the psychological harm of rape—including shame, fear, anger, a feeling of chronic peril, a shattered sense of self, and suicidal ideation—is often worse. Many victims suffer from post-traumatic stress disorder. Symptoms include intrusion (recurrent thoughts, nightmares, or flashbacks), hyperarousal (irritability or an exaggerated startle response), and avoidance (social withdrawal or emotional numbing).

Although many believe that victims promptly report a rape to police or other local authorities, most victims around the world never report the sexual violence they suffer. In many communities, to report a rape is actually to risk punishment, as the victim herself may be punished for admitting to having had sexual intercourse outside of marriage. Formal and informal punishment of rape victims ranges from public disgrace and social ostracism, to actual imprisonment for fornication or prostitution, to becoming the victim of a so-called honor killing by family members who believe the only way to cleanse the family name of the stain of illicit sexual intercourse is murder of the rape victim.

Despite the massive social and public health crisis that it represents worldwide, sexual violence continues to be shrouded in shame, victims continue to be blamed and despised within their own communities, and the law continues to struggle to offer victims justice.

Legal History

English common law defined *rape* as a man sexually penetrating a woman (but not his wife) by force and without her consent. To be convicted of rape, the man had to use physical force or its threat to obtain sexual penetration. Notably, the law was gendered: only men could commit it and only women were its victims. It was limited to vaginal intercourse and excluded anal and oral rape. Forced sexual intercourse by a husband on his wife was also excluded. Marital rape was a lawful act, no matter the force employed. Rather than an offense against a woman's sexual autonomy, rape was considered similar to a property offense—a theft of [p. 1266 ↓] virginity—which was a crime against the victim's father or prospective husband.

English common law imposed unique requirements on victims who were raped. For example, although English courts by the 1700s had removed the prompt complaint requirement for victims of other violent offenses, the mandate continued for rape victims. Unlike victims of other crimes, rape victims were required to express their nonconsent with utmost physical resistance. Although chastity was not a formal requirement, a rape complainant's lack of chastity cast serious doubt on her credibility as a witness under oath, as well as to suggest her propensity to consent to sexual intercourse indiscriminately. Judges issued special and unique cautionary instructions in rape cases that warned jurors to regard the testimony of the complainant with extra suspicion. Finally, some jurisdictions additionally imposed a corroboration requirement on rape victims to legitimate their allegations.

Evolution in Rape Law

Rape law in the past thirty years has seen widespread change. The majority of European countries, for instance, have modified their definitions of rape. Many definitions are now gender neutral. Many include oral and anal rape, as well as rape with an object. Many jurisdictions around the world have broadened the types of coercion that they recognize as unlawful force. For example, drugging someone in order to have sexual intercourse with them constitutes forcible rape in many jurisdictions.

Despite widespread change, however, rape statutes in most jurisdictions that evolved from English common law retain powerful vestiges of it. In the United States, for instance, although all states criminalize husbands' forcible rapes of their wives, twenty-six states retain a modified marital immunity. Many exempt spouses from lesser sexual offenses than rape by force. Some impose lesser penalties for spousal sexual offenses, regardless of force used or injury caused. Many impose extra requirements on the prosecution of marital rape, including requirements of prompt complaint, separation or divorce at the time of the assault, or extra force or violence.

In many countries, no longer is a rape victim formally required to resist to the utmost of her physical capacity in order to express nonconsent; however, it is often difficult for prosecutors to obtain rape convictions unless the victims physically resist. Numerous jurisdictions have rejected the prompt complaint requirement, the corroboration

requirement, and special cautionary instructions, yet it remains hard to convict without a prompt complaint or corroboration. Many states have also passed rape shield laws, which limit the kinds of questions defendants may ask alleged victims to suggest their lack of chastity; however, these laws usually contain many significant exceptions.

Rape Laws around the World

Laws of countries with different cultures and histories define rape in a manner similar to the traditional English common law. For example, the rape laws in Israel, Brazil, Russia, and India focus on vaginal sexual intercourse and are similarly gendered, with only men as perpetrators and only women as victims. Even when a country's jurisprudence did not derive from English common law, its law often evinces a similar suspicion of victims and imposes special burdens on those who come forward with allegations of rape. For example, in many states that impose a harsh version of Islamic law, women who allege rape must present witnesses to the crime to corroborate their allegations. Brazil likewise requires rape victims to produce witnesses unless they have visible bruises to provide corroboration. In Nigeria and Ghana, judges commonly give a cautionary instruction in rape cases. Pakistan's *hudoon* laws give authorities the ability to whip and incarcerate women who come forward with allegations of rape when they fail to produce four male witnesses to the crime.

Chastity continues to figure prominently in rape trials. In many countries, a rape complainant's prior sexual history is admissible evidence. Rape defendants in many countries will not be convicted if their victims were not virgins at the time of the attack. Around the world, marital rape remains a dubious legal category: many states, such as Albania, Kosovo, [p. 1267 ↓] and Romania, do not criminalize it; others, such as Poland, rarely prosecute it.

Moreover, in most countries, rape is not usually reported to authorities because of the shame, hostility, and ostracism victims who do come forward suffer within their communities. Rape crisis counselors in Japan, for instance, note that few women in Asian countries report having been raped to authorities because of strong cultural imperatives to protect one's self and family from shame and shunning.

International Law

Organized, premeditated sexual attacks have perhaps always been instruments of war. The past few decades have seen widespread reporting of rape by state actors in Serbia, Rwanda, Uganda, Peru, the Democratic Republic of Congo, and Sudan, among other countries. The international community has come to recognize rape as a war crime and a violation of the laws of nations. Both the International Criminal Tribunal on Rwanda and the International Criminal Tribunal on the Former Yugoslavia allowed for the prosecution of rape as a crime against humanity.

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See also

- [Bride Burning](#)
- [Critical Feminist Theory](#)
- [Family Violence](#)
- [Honor](#)
- [Human Rights, International](#)
- [International Criminal Tribunals](#)
- [Sex Offenders](#)
- [Sexual Harassment](#)
- [Victims' Rights](#)
- [War Crimes](#)

Further Readings

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