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# Barriers to Recognizing ‘Forced to Penetrate’ Cases as Rape in the United Kingdom

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## ABSTRACT

*The issue of men’s sexual victimization in the context of the female perpetrator and male victim, specifically in the cases where male victims are ‘forced to penetrate’ by a penis, either vaginally, anally, or orally a female perpetrator does not fall within the existing legal definition of rape in the United Kingdom. This paper explores the issue of ‘forced to penetrate’ cases and makes an argument for legally recognizing and labelling ‘forced to penetrate’ cases as rape. The paper draws upon the lived experiences of male victims and highlights that there are significant similarities between the experiences of victims who are ‘forced to penetrate’ and those who are non-consensually penetrated. The paper suggests that the recognition of ‘forced to penetrate’ cases will improve the understanding about men’s sexual victimization, as well as challenge stereotypes of gender and sex.*

**Keywords:** Male Victims, Female Perpetrator, Forced to Penetrate, Rape and the United Kingdom.

## I. INTRODUCTION

This paper addresses the issue of female sexual aggression, mainly towards adult males, by particularly focussing on forced intercourse as a serious form of sexual aggression. In doing so, this paper examines the sexual victimization of men by women in ‘forced to penetrate’ cases in the United Kingdom. The main aim of this paper is to provide an understanding of female sexual aggression against men through the study of compelled penetration cases and the resulting need to undertake legal reform to recognize ‘forced to penetrate’ cases as rape in the UK.

At the outset, it must be stated that the study of men as victims of female sexual aggression, while slowly emerging, is yet to acquire broader public awareness and acknowledgment (Black et al., 2011). Indeed, women are more likely to be victims of sexual aggression, particularly rape, and therefore there is extensive literature available focussing on male perpetration and

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female victimization. The development in the field of female victimization, particularly around studying gender-based violence through rape, is motivated by the traditional understanding of masculinity and male domination (Gavin, 2015). Rape is a clear example of both physical power and male-female sex-gender relations. Rape as a crime not only demonstrates the active (male)/passive (female) division but also underscores aggression reflected through forcible intercourse as an essential feature of the masculine gender definition. As observed by Brownmiller (2013), ‘when men discovered that they could rape, they proceeded to do it’. Note that the traditional understanding of rape as only an act of penis-vagina intercourse is nothing but the result of notions of sexual hierarchy shared across patriarchal societies that results in gender-specific victimization (Schiffman, O’toole, Edwards, and Edwards, 2007). Nevertheless, because, for the most part, the crime of rape has been primarily seen as men’s violence against women by legislators, policymakers, legal and social service professionals, it has been argued that this viewpoint has contributed significantly not only to a limited understanding of rape and rape laws but also led to the exclusion of male victimization from the discourse on rape and gender violence (Taylor, Keeling and Mottershead, 2019). Despite this argument, it is vital to point out at this juncture that the need for recognizing and labelling ‘forced to penetrate’ cases as rape does not undermine the existing statistics as per which the majority of rapes are perpetrated by men against women. It is believed that the labelling of ‘forced to penetrate’ cases as rape will have the effect of only aiding a better-gendered analysis of rape by allowing for further examination of complex dimensions of power that underpin the offence of rape.

Despite ‘forced to penetrate’ cases (when a male victim is forced to penetrate the perpetrator’s vagina, anus, or mouth using his penis and without his consent) being recognized as forced intercourse in other jurisdictions, such cases are not legally recognized as rape in the UK (Struckman-Johnson & Struckman-Johnson, 1998; Tomaszewska & Krahé, 2018; Weare, 2018). Note that the UK only recognized male rape as a crime in 1994, prior to which rape as a crime could only be committed by a male against a female. The Sexual Offences Act 2003 made the crime of rape gender-neutral by removing the distinction between ‘rape’ and ‘male rape’; however, it retained the requirement of intentional penile penetration for a charge of rape to be confirmed which also meant that a woman could not rape a man or another woman (The Sexual Offences Act, 2003).

With this backdrop, Section 2 of this paper focuses on the definition of rape in the UK and its limitations. Section 3 of the paper highlights the experiences of male victims of ‘forced to penetrate’ cases. Section 4 of the paper examines the differences, if any, in the harm caused to

male victims vis a vis the harm suffered by female victims of rape. Finally, Section 5 of the paper concludes by arguing for the recognition of ‘forced to penetrate’ cases to be legally recognized as rape in the UK as it would help eliminate harmful gendered sexual stereotypes and redefine conventional notions regarding gender and sex.

## **II. DEFINING RAPE IN THE UK**

Section 1 of The Sexual Offences Act (2003) defines rape as follows:

‘(1) A person (A) commits an offence if-

(a) he intentionally penetrates the vagina, anus, or mouth of another person (B) with his penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.’

The contemporary understanding of rape, despite the recognition of male-to-male rape, continues to construe the offense as a gendered crime perpetrated by men against women. The present law in the UK emphasizes the existence of non-consensual penile penetration as constituting an offense of rape, making it impossible for a woman to rape a man or another woman. In light of the above definition, as noted by McKeever (2019), ‘if a woman has sex with a man or a woman who is either too drunk to consent, unconscious, unable to consent to sex due to a disability, or if she has duped the victim about her identity in order to get them to agree to have sex, or even if she violently and sexually attacks her victim against their will, the incident will not be classified as rape.’ The incident would instead be classified as ‘causing a person to engage in sexual activity without consent’ the maximum punishment for which is life imprisonment – the same as rape (The Sexual Offences Act, 2003). For instance, in a recent case in the UK, Gayle Newland, a woman, was charged with three counts of assault by penetration and was sentenced to eight years in prison. Newland met a female student online while pretending to be a man named Kye Newman. Newland pretended to have horrific injuries and insisted that the student remained blindfolded the whole time whenever they met. Soon their relationship became sexual. They had sex for several months, with Newland wearing a prosthetic penis and bodysuit when at one point, the student ripped off her blindfold during sex to find out the truth (Hattenstone, 2017).

Although the maximum sentence for ‘causing a person to engage in sexual activity without consent’ is the same as rape under UK law, the difference of nomenclature between the two offences is crucial, especially in relation to how each offence is perceived and the perpetrator

is treated including the experiences of the victim. For example, going by the conventional gendered understanding of rape which positions men as the dominant actor and women as the victim, women cannot commit the offence because of the requirement of non-consensual penile penetration making the offence of rape be perceived as more severe than ‘causing a person to engage in sexual activity without consent’ (Muehlenhard, 1998). The Newland case can be seen as an example of how due to the existing difference in nomenclature and the penile penetration centric view of sex, Newland was charged for assault by penetration and not rape. As noted earlier, the ongoing issue of the non-recognition of the female perpetrator-male victim paradigm, especially where male victims are ‘forced to penetrate’ female aggressors is related to the gendered understanding of rape that has led to the exclusion of recognizing male victimization. Note that, despite recognition of male-to-male rape under UK law, men are still not readily recognized as victims. As noted by Weiss (2010),

‘Social ideals about gender may especially contribute to the non-recognition of men as victims. For instance, while social constructs of femininity – as physically weak and sexually vulnerable – fit overall perceptions of sexual victims, social expectations of what it is to be a man in our society – as strong, tough, self-sufficient, and impenetrable – counter images of victimisation in general and sexual victimisation in particular. With “real” men expected to avoid behaviours associated with femininity, men who are overpowered by others may be judged to have failed in their masculine duty to stick up for themselves.’

The gendering of rape which primarily places men as the aggressors in rape rather than a victim, is also responsible for the non-recognition of female-to-female rape. This is because power and dominance are always associated with men in patriarchal cultures, and the penis is seen as a ‘weapon of force’ which is to be used against women (Brownmiller, 2013). This view also gives rise to questions regarding the understanding of sex and sexual violence, including rape (which fall outside the scope of this paper but are nevertheless crucial), such as whether sex between women is considered ‘real’ sex considering it does not involve a penis. In short, going by the gendered understanding of rape, can a woman be raped by another woman?

### **III. EXPERIENCES OF MALES WHO ARE FORCED TO PENETRATE**

There is no significant data available from the government on the prevalence of ‘forced to penetrate’ cases in the UK. However, studies have been conducted in other jurisdictions such as the United States that have provided statistics and highlighted how men have been ‘forced to penetrate’ women. As per Weare (2018),

‘The most recent large-scale dataset incorporating forced-to-penetrate cases is the National

Intimate Partner and Sexual Violence Survey 2010 conducted in the US; 16,507 adults were interviewed, using a random digit dial telephone survey, on their experiences of sexual violence, stalking, and intimate partner violence. Defining being made to penetrate for men as including forced penetration by the victim's penis or mouth into the perpetrator's vagina, anus, or mouth, as well as attempts, it was found that approximately 1 in 21 (4.8%) of men reported that they were made to penetrate someone else during their lifetime. Of those 4.8 percent, 79.2 percent reported the perpetrator as being female.'

Two small-scale studies were also conducted in Berlin and Brandenburg, Germany, to estimate the prevalence of men becoming targets of women's sexual aggression. In these studies, rape was defined as penile-vaginal intercourse through the use or threat of force. The studies found that of the 247 younger men (whose average age was 18 years) who took part in the anonymous questionnaire, 2.8 percent of them had been 'forced to penetrate' the vagina of a woman. Of the 152 older participants (whose average age was 22 years), 5.2 percent of the men had experienced compelled penetration (Krahé et al., 2003a).

The limited studies on 'forced to penetrate' cases only provide some evidence of the existence of this specific type of offending. It is therefore clear that more research needs to be conducted, particularly large-scale studies, especially in the UK, so that the prevalence rate in relation to 'forced to penetrate' cases can be accurately assessed. Note that, despite the data collected from studies on 'forced to penetrate' cases, for many within society, a common belief exists that men cannot physically be 'forced to penetrate' women. This common belief is tied to physical differences between men and women as per which a woman cannot bring about sexual intercourse with a man against his will because men are considered physically stronger than women (Rumney and Morgan-Taylor, 1997). Further, it is also believed that men can only 'obtain and sustain erections when sexually aroused, and therefore not in stressful or violent circumstances' (Rumney and Morgan-Taylor, 1997). Going by this understanding, the experiences of men in the above-mentioned studies cannot truly be considered non-consensual since, for sexual intercourse to occur, it is necessary that an erection is maintained. However, research has shown that male victims do respond sexually when experiencing sexual violence. For instance, as noted by Sarrel and Masters (1982), 'men or boys have responded sexually to female assault or abuse even though the males' emotional state during the molestations has been overwhelmingly negative – embarrassment, humiliation, anxiety, fear, anger, or even terror.' Thus, not only can men sustain erections without being sexually aroused, but male victims have also reported ejaculating during their 'forced to penetrate' experiences (Fisher and Pina, 2013).

A crucial aspect of experiences of the male ‘forced to penetrate’ cases is related to how such penetration occurs. This question arises mostly because of the discourses around masculinity, which often portray men as strong and powerful and therefore being able to protect not only themselves but also others. However, research has highlighted that the circumstances and context surrounding non-consensual experiences appear to be almost similar for men and women (Byers and O’Sullivan, 1998). Although, as noted earlier, it is believed that men are physically stronger and, therefore can always fight back in response to an attack, research has shown that men too can ‘react to an extreme personal threat with frozen helplessness’ like female rape victims (Mezey and King, 1989). Moreover, the aggressive strategies used in men’s non-consensual experiences of sexual intercourse with women are also similar to those experienced by female rape victims, including the use of coercion through verbal pressure, threats or physical force, and the use of alcohol and drugs (O’Sullivan, Byers and Finkelman’s 1998). It must be noted here that, while the aggressive strategies used in ‘forced to penetrate cases’ are similar to both male and female victims, the frequency of the specific aggressive strategy may differ depending on the gender of the victim. As per Struckman-Johnson (1998), while female victims of rape have mostly reported the use of physical force or threats of harm by male perpetrators as an aggressive strategy, male victims have pointed out the use of verbal pressure or coercion as an aggressive strategy by female perpetrators. Following are some of the lived experiences of male victims who were forced to penetrate by female perpetrators using aggressive strategies including coercion, threat or physical force, and use of alcohol and drugs:

‘I was 17 and dating a much older woman..I went to her apartment to break up with her, and she said that if I did, she would kill herself. I was I and fell for it and blamed myself for her deluded way of thinking and fell into her manipulations. She said she would kill herself if we didn’t fuck right then to prove I still loved her and wanted her. I was young and thought that if I didn’t do this, I’d essentially have someone’s blood on my hands. I couldn’t get it up naturally, but after a while, she got me erect, and then she climbed on top of me’ (Jensen, 2014).

‘I was being interviewed by a reporter. She promised me she would write my biography and invited me to her apartment to continue the interview. She then told me she would not write about me unless I had sex with her’ (Struckman-Johnson and Struckman-Johnson, 1998).

Coercion and verbal pressure, as shown above, have often been highlighted as being the most common aggressive strategy used by women to force men to penetrate them. Note that coercion here refers to non-physical sexual pressure, namely ‘persuading another individual to engage in sexual acts that he or she would not engage in otherwise through the use of deceptive or

threatening psychological manipulations' (Vanderlaan and Vasey, 2009). Men have also mentioned that women use a societal understanding of masculinity as a weapon against them and threaten to negatively label them as less masculine if they rejected to engage in sexual intercourse.

The use of threat or physical force has also been documented but only as one of the least common aggressive strategies in cases of female-perpetrated sexual violence against men. The reason for the use of threat or physical force being one of the least common aggressive strategies could be related to men being unwilling to admit the use of threat or physical force within their forced to penetrate experiences for fear of being labeled as less masculine (Sarrel and Masters, 1982).

The limited research carried out in relation to 'forced to penetrate' cases have also shown how alcohol and/or drugs have been used by women to intoxicate men and engage in sexual intercourse against their will. The use of alcohol and/or drugs as part of aggressive strategy is, to an extent, unsurprising, as intoxicating a victim before rape is well documented, and this specific strategy has been used in other forms of sexual violence (Krahé et al., 2003a). A study also revealed that 5.6 percent of women had taken advantage of a man's incapacitated state and forced him into sexual intercourse (Krahé et al., 2003b). Interestingly, it has been suggested that men are more likely to admit that they were either drinking or using drugs before being forced to engage in sexual intercourse since their incapacitated state provides a plausible explanation for being a victim of rape and being overpowered by a woman who might be much smaller in size and strength (Weiss, 2010).

The above-mentioned aggressive strategies and the lived experiences of men are similar to the experiences of women (that are legally categorized/labelled as rape). If the gender of the perpetrators and the victims were reversed in the experiences mentioned above, then most likely, the above acts would be criminalized as rape. Though the aggressive strategies and experiences of 'forced to penetrate' male victims may be similar to those of female rape victims, a woman could have sex with a man without his consent, and the act would still not be considered rape because of the justification that there is something different, and indeed worse, about being forcibly penetrated than being compelled to penetrate another person. As noted by Cowan (2010), 'failure to recognize as rape those cases in which a woman forces a man to penetrate her vaginally, orally or anally suggests that there is something specific about being non-consensually penetrated that is more fundamentally damaging, traumatic or violating than being compelled to penetrate.' The following section, therefore, examines the argument whether male victims who are 'forced to penetrate' suffer similar harm compared to



female victims of rape who are forcibly penetrated.

#### **IV. HARM CAUSED IN FORCED TO PENETRATE CASES**

According to the Home Office in the UK, victims of rape who are forcibly penetrated experience more harm than male victims who are ‘forced to penetrate’. The Home Office, whilst acknowledging that it is physically possible for a man to be forced to penetrate a woman, they rejected the argument that such an experience was equivalent to rape. The Home Office argued that ‘forced to penetrate’ cases were only ‘a serious assault on the man’s sexual autonomy’ (Home Office, 2000). The justification for not legally recognizing ‘forced to penetrate’ cases as rape is based perhaps on the argument that men do not suffer from physical harms associated with rape (genital injuries) when they are ‘forced to penetrate’, whereas such genital injuries are an inevitable finding in the case of female victims of rape. This argument might be true in some cases, mostly because evidence of genital harm for male victims has not been widely reported, but research has shown that in most cases where women have been victims of rape, they too have disclosed that they did not suffer any genital injuries. As per a study conducted by Bowyer and Dalton (1997), out of 83 women who reported being raped, only 22 had genital injuries. Further, women have experienced vaginal injuries of similar level in both consensual and non-consensual sexual intercourse (Hoffmann, 2012). Therefore, it is important not to strictly associate a genital injury with rape, mainly because of the inconsistency of genital harm in rape cases. Another justification for non-recognition of ‘forced to penetrate’ cases is the possibility of pregnancy, that has long been recognized as particular physical harm potentially arising from non-consensual penile-vaginal penetration for female rape victims. The risk of pregnancy though the present is no longer central to the understanding of rape in the UK because of the protections available to all women, including infertile, menopausal, and sterilized women, under the law of rape. Also, oral and anal penetration is included within the existing legal definition of rape (Temkin, 2002). Further, although there is no risk of pregnancy as physical harm occurring to male victims in ‘forced to penetrate’ cases, there is, however a risk of the female perpetrator becoming pregnant which can cause emotional and psychological distress to the victim. According to one ‘forced to penetrate’ victim, ‘he was, as he put it, ‘raped’ by his ex-girlfriend when they met to discuss their break-up. A few weeks after the assault, she texted him to say that she thought she might be pregnant. The boy panicked because he thought he would lose his family, especially as his parents had made it clear that he would be on his own if he ever fathered a child out of wedlock’ (Anderson et al., no date).

It is well recognized that victims of rape often experience acute emotional and psychological

harm. However, questions still arise over whether ‘forced to penetrate’ victims experience similar emotional and psychological harms (emphasis on the experience in the above example) compared to female victims of rape who are forcibly penetrated. It has been argued that another justification for the exclusion of ‘forced to penetrate’ cases from legal recognition as rape may be partly because the victim in such cases is not penetrated. Because having one’s body penetrated against one’s will is still considered essential to not only mark out the offence of rape but to categorize the offence as a particularly traumatic experience. That is to say that the experiences of male victims of ‘forced to penetrate’ is less traumatic than female victims of rape just because the male victims were not penetrated. To understand the difference, if any, in the emotions experienced by male and female victims, it is vital to consider a host of factors. Firstly, the role of pervasive stereotypes surrounding masculinity needs to be considered that suggests that men should always enjoy all sexual contact with women, including those situations where women themselves approach men demanding sex. Stereotypes surrounding masculinity and sex limit the seriousness of the emotional and psychological harm to male victims of ‘forced to penetrate’ cases. Male victims may either be unable to recognize the negative impact associated with an experience of compelled penetration or minimise the seriousness of their victimization by thinking that what happened to them is only natural because men should always enjoy sex and not complain about it (LeTrent, 2013). Secondly, the fact that not all victims of sexual violence experience the same emotional or psychological harm needs to be taken into consideration. Victims of sexual violence attach different meanings to their experiences and their consequences based on their own understanding. It is possible that the same experience may have a different impact on different people. For instance, some men may appear more distressed by their non-consensual experience, while some women may not. Therefore, it is essential not to compartmentalize emotional and psychological harms only around rape victims who are non-consensually penetrated (Byers and O’Sullivan, 1998). Research has shown that significant numbers of ‘forced to penetrate’ victims have acknowledged being under severe emotional and psychological trauma. This is evident in the extract below:

‘I really can’t get over it now...Since that happened, my fear of the opposite gender became a little stronger...I can’t think of anyone that would honestly have a clue about what happened to me that one night, but it’s all gone now. 16, raped and blinded by fear’ (Jensen, 2014).

As noted earlier, there can be some differences in the degree of harm experienced by male victims in ‘forced to penetrate’ cases and female rape victims. However, what is evident from the above discussion is that there are significant similarities, particularly in relation to the

psychological and emotional traumas that victims have reported. As a result, it is unfair to not offer men protection under the law simply because they are penetrator victims rather than penetrated victims.

## **V. CONCLUSION**

This paper has addressed the issue of female sexual aggression, mainly towards adult males, by particularly focussing on the sexual victimization of men by women in ‘forced to penetrate’ cases in the UK. Drawing upon the lived experiences of ‘forced to penetrate’ male victims, this paper has provided an understanding of female sexual aggression against men and the resulting need to undertake legal reform to recognize ‘forced to penetrate’ cases as rape in the UK. In doing so, this paper has focussed on the significant similarities not only between legally recognized rape and ‘forced to penetrate’ cases but also on the aggressive strategies used by both male and female perpetrators and the physical and emotional harms experienced by the victims. The objective of the paper is also to indicate that women too can be sexually aggressive and dominant and that men are not always ‘ready for sex’, and that both men and women have the right to sexual and bodily integrity. Further, the need for legally recognizing ‘forced to penetrate’ cases as rape does not undermine the gendered nature of rape, meaning it does not deny that rape has been and continues to be a tool by which men oppress women.

Although the paper does not comment on what a reformed legal definition of rape in the UK should look like, the paper has nevertheless raised arguments for considering a change in the law regarding the understanding of rape. As noted earlier, there is a need for further research in this area to answer key issues such as: how to reform the definition of rape to include ‘forced to penetrate’ cases; how far the approaches taken by other jurisdictions in relation to incorporating ‘forced to penetrate’ cases can be successfully applied in the UK; and have there been successful prosecutions in other jurisdictions on ‘forced to penetrate’ cases and how far have such prosecutions impacted the understanding of rape law? In short, there is an urgent need to look into both the theoretical and the practical implications of legal reform concerning ‘forced to penetrate’ cases.

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