

# The Last Taboo: Male Rape and the Effectiveness of Existing Legislation in Afghanistan, Great Britain, and the United States

Stephanie Ng\*

I.	INTRODUCTION .....	227
II.	AFGHANISTAN .....	229
	<i>A. History of Afghanistan and Current Legislation</i> .....	229
	<i>B. Cultural and Societal Perceptions of Rape</i> .....	231
	<i>C. Bacha Bazi: The Effectiveness of Rape Laws         Applied to Males</i> .....	232
III.	GREAT BRITAIN .....	234
	<i>A. History of Great Britain and Current Legislation</i> .....	234
	<i>B. Cultural and Societal Perceptions of Rape</i> .....	237
	<i>C. Government Intervention: The Effectiveness of         Rape Laws Applied to Males</i> .....	239
IV.	UNITED STATES .....	241
	<i>A. History of the United States and Current Legislation</i> .....	241
	<i>B. Cultural and Societal Perceptions of Rape</i> .....	242
	<i>C. Prison Rape: The Effectiveness of Rape Laws         Applied to Males</i> .....	244
V.	ANALYSIS .....	245
	<i>A. Legislative Reform</i> .....	246
	<i>B. Education</i> .....	246
	<i>C. Social Services</i> .....	247
VI.	CONCLUSION .....	248

## I. INTRODUCTION

In a world increasingly connected by technology where one click can yield over a million search results, it would seem that no subject is left untouched and no topic is taboo. The crime of rape has been covered

---

\* © 2014 Stephanie Ng. J.D. candidate 2015, Tulane University Law School; B.A. 2009, George Washington University. The author would like to thank her parents for their support throughout this process and beyond. She would also like to thank the individuals who inspired this Comment by sharing their stories.

in numerous academic circles, ranging from the legal community to psychoanalysts, women's rights activists, and law enforcement officials. However, rape is often discussed from the perspective of female victims and male perpetrators. Even in this context, rape remains one of the most underreported crimes.<sup>1</sup> Additionally, there is a veil of silence cast upon the issue of male victimization across different countries and cultures. Some have challenged whether a male can actually be classified as a rape victim while others see the topic as uncomfortably taboo.

Because the law is made "by the people for the people,"<sup>2</sup> societal perspectives have had a large impact on rape laws and the way they are framed. In societies where male rape is considered taboo, rape legislation mirrors the community's beliefs, mores, and customs. This Comment will focus on the effectiveness of these laws as applied to male victims in three specific countries: Afghanistan, Great Britain, and the United States. The analysis of each country includes an overview of the country's history and legislation, a look into the societal perception of rape and its effect on the law, and a discussion on whether males are aptly protected by their country's legislation. Also, the three countries will be compared and contrasted to highlight the major obstacles that stand in the way of progress and to explore what can be done to rectify existing problems. The proposed solutions include suggested reforms of existing legislation, but also look beyond the law for other means to redress the gaps in the protections of males. The equally valuable tools of education and social programs demonstrate how different aspects of society play a role and come together in a collaborative effort to better protect their own in this quest for reform. The proposed solutions take a dual approach, by both amending existing laws and employing other means to fill in gaps left behind by current legislation. Although the law acts to safeguard individuals and their well-being, other solutions are available.

---

1. *Reporting Rates, RAPE, ABUSE & INCEST NAT'L NETWORK*, <https://www.rainn.org/get-information/statistics/reporting-rates> (last visited Nov. 8, 2014).

2. Abraham Lincoln, *Gettysburg Address* (Nov. 19, 1863), *in* GEORGE ANASTAPLO, *ABRAHAM LINCOLN: A CONSTITUTIONAL BIOGRAPHY* 234 (1999).

## II. AFGHANISTAN

I can't think of any country in the world in which children suffer more than in Afghanistan . . . . In all our meetings with children, it takes a lot of time to make them smile. That to me shows that there is not happiness in their hearts.

—Radhika Coomaraswamy<sup>3</sup>

A. *History of Afghanistan and Current Legislation*

Afghanistan was dubbed one of the world's most corrupt nations by Transparency International, which defines corruption as the misuse of public power for private benefit.<sup>4</sup> Throughout the past several decades, Afghanistan has been embroiled in internal turmoil and international conflict. The country has been torn apart by almost three decades of warfare, beginning with the Soviet War in Afghanistan in 1979.<sup>5</sup> This situation was further exacerbated by two subsequent civil wars and a decade of internal conflict, which resulted in a shift in governance and political ideology that had a large impact on the law.<sup>6</sup> As a result of warfare and conflict, Afghanistan became one of the least developed countries in the world.<sup>7</sup>

The next major shift in power came in 1996 with the Taliban takeover of Kabul, the capital of Afghanistan.<sup>8</sup> Under Taliban rule, the Afghan people were forced to comply with a host of restrictions and new laws.<sup>9</sup> Taliban jurisprudence was rooted in their interpretations of Sharia and Pashtunwali, the Pashtuns' pre-Islamic tribal code.<sup>10</sup> Under this system, common punishments included flagellation, amputation, and execution.<sup>11</sup> The Taliban also established a Ministry for the Promotion of

---

3. Atia Abawi, *Afghan Children Raped with 'Impunity,' U.N. Official Says*, CNN (Sept. 11, 2008) <http://edition.cnn.com/2008/WORLD/asiapcf/08/07/afghan.family> (internal quotation mark omitted).

4. *Corruption by Country/Territory*, TRANSPARENCY INT'L, <http://www.transparency.org/country#AFG> (last visited Nov. 8, 2014); *FAQs on Corruption*, TRANSPARENCY INT'L, [http://www.transparency.org/whoweare/organisation/faqs\\_on\\_corruption/2/](http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/) (last visited Nov. 8, 2014).

5. John F. Murphy, *Afghanistan: Hard Choices and the Future of International Law*, 85 INT'L L. STUD. 79, 81 (2009).

6. Zachary Laub, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/afghanistan/taliban-afghanistan/p10551> (last updated July 4, 2014).

7. *Afghanistan: Fifth Least Developed Country in the World*, IRIN (Nov. 18, 2007), <http://www.irinnews.org/report/75365/afghanistan-fifth-least-developed-country-in-the-world>.

8. Murphy, *supra* note 5, at 82.

9. Laub, *supra* note 6.

10. *Id.*

11. Toni Johnson & Mohammed Aly Segie, *Islam: Governing Under Sharia*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/religion/islam-governing-under-sharia/p8034> (last updated July 25, 2014).

Virtue and Prevention of Vice.<sup>12</sup> The new regime issued decrees severely restricting the role of women in society and forbidding them from working or leaving the home without a male relative.<sup>13</sup>

This paved the way for the new Islamic Republic of Afghanistan headed by President Hamid Karzai.<sup>14</sup> A new constitution was adopted in 2004 and approved by consensus.<sup>15</sup> Under the constitution, Islam is the official religion of the Islamic Republic of Afghanistan.<sup>16</sup> Article 54 also specifically points out that “[f]amily is the fundamental pillar of the society, and shall be protected by the state.”<sup>17</sup> This article provides for the protection of the physical and spiritual health of children. Afghan criminal law is further governed by the 1976 Penal Code, which does not explicitly criminalize rape but instead references only adultery and pederasty.<sup>18</sup>

Human rights groups have criticized the fact that victims of rape risk being convicted of fornication outside marriage (*zina*) and are denied justice.<sup>19</sup> The existing laws treat adultery and rape as the same crime and fail to define or address rape.<sup>20</sup> Article 427 of the Penal Code vaguely states, “A person who commits adultery [sic] or pederasty shall be sentenced to long imprisonment.”<sup>21</sup> There is no discussion of consent, and the Penal Code does not address rape in any other articles.<sup>22</sup> The concept of *zina* skirts the issue of consent and does not even use the term rape; instead, it focuses on the criminality and illegality of sexual intercourse outside of marriage.<sup>23</sup> Based on this, two people engaging in *zina* can be criminally punished, but if coercion can be proven, then the

---

12. Laub, *supra* note 6.

13. Pierre Tristam, *Taliban Rules Decrees, Laws and Prohibitions*, ABOUT NEWS, <http://middleeast.about.com/od/afghanista1/a/me080907c.htm> (last visited Nov. 24, 2014).

14. *Id.*

15. AFG. CONST., available at <http://www.afghanembassy.com/pl/afg/images/pliki/TheConstitution.pdf>.

16. *Id.*

17. *Id.*

18. *Penal Code*, UNITED NATIONS OFF. ON DRUGS & CRIME (Oct. 7, 1976), [https://www.unodc.org/tldb/pdf/afghanistan\\_penal\\_code.pdf](https://www.unodc.org/tldb/pdf/afghanistan_penal_code.pdf).

19. *Afghanistan: “Differentiate Rape from Adultery”—Rights Groups*, IRIN (Sept. 3, 2009), <http://www.irinnews.org/report/85978/afghanistan-differentiate-rape-from-adultery-rights-groups>.

20. Golnar Motevalli, *Rape a “Huge Problem” in Afghanistan*, *U.N. Says*, REUTERS (July 8, 2008, 3:56 PM IST), <http://in.reuters.com/article/2009/07/08/idINIndia-40897220090708>.

21. *Penal Code*, *supra* note 18, art. 27.

22. *Silence Is Violence: End the Abuse of Women in Afghanistan*, UNITED NATIONS OFF. HIGH COMM’R FOR HUM. RTS. (July 8, 2009), [http://www.ohchr.org/Documents/Press/VAW\\_Report\\_7July09.pdf](http://www.ohchr.org/Documents/Press/VAW_Report_7July09.pdf).

23. *Id.*

victim is not held criminally liable.<sup>24</sup> The gray area between consensual and coercive *zina* adds to the ambiguity of rape legislation in Afghanistan, which was already dubious due to its omission from the Penal Code.

The gaps in legislation have left room for authorities to interpret the law as they see fit and judges often rely on their individual interpretation of Islamic law in their consideration of *zina* cases.<sup>25</sup> A party bringing a claim of *zina* has to provide four adult male witnesses of sound standing.<sup>26</sup> Although this may protect individuals from false claims of adultery, this has troubling implications in rape cases because of the burden of proof it applies.<sup>27</sup> The United Nations Assistance Mission in Afghanistan and Office of the High Commissioner for Human Rights released a 2009 report titled “Silence is Violence—End the Abuse of Women in Afghanistan.”<sup>28</sup> The report criticizes the Afghan government for its failure to adequately address the crime of rape, claiming that the government did not “establish effective and appropriate referral pathways for victims to get assistance and to promote awareness-raising that rape is a serious crime. As a result, rape is shrouded in social taboos that help maintain a conspiracy of silence, and by extension, inaction, that perpetuates and exacerbates the problem.”<sup>29</sup> Additionally, formal justice in Afghanistan is not available to all; the report noted that 80% of the population relied on traditional dispute resolution methods.<sup>30</sup> Additionally, the omission of rape in the Penal Code has an effect on law enforcement, which does not see investigation of rape cases as a priority due to the lack of clear legislation on the crime of rape.<sup>31</sup>

### *B. Cultural and Societal Perceptions of Rape*

Legislation and social perceptions are locked in a circular relationship: existing rape legislation has impacted the way Afghan society views rape as a crime and, at the same time, societal viewpoints on rape have shaped and molded the body of law. As discussed above, the current laws in Afghanistan that govern the crime of rape have had a large impact on society’s perception of rape. Victims, perpetrators, and law enforcement officials have all been influenced by the constitution

---

24. *Id.*

25. *Id.* at 24.

26. *Id.*

27. *Id.*

28. *Id.* at 1-3.

29. *Id.* at 21.

30. *Id.* at 24.

31. *Id.*

and Penal Code. The law is a product of the citizenry, so it is important to examine the cultural and societal influences that impact law-making to better understand the ramifications of existing legislation.

According to the Pashtun code of conduct (*Pashtunwali*), there are several options available to victims' families when settling a rape allegation.<sup>32</sup> Both parties could be killed, even if one party did not consent to the intercourse, due to the shame inflicted on both families. Another possible solution is the *baad* exchange, in which the perpetrator's family gives one or more girls to the victim's family as compensation.<sup>33</sup> Cultural norms in Afghanistan have been characterized by a division in gender roles, and many believe that it is the duty of the state to preserve the "dignity and honour" of women and families.<sup>34</sup> In spite of this, rape is still widespread in Afghanistan, and often the victims may be punished instead of the perpetrators.<sup>35</sup> Sex is seen as a private matter and rape as a taboo topic. An Afghan prison conducted a survey of convicted rapists with surprising results; the survey showed that many did not know rape was a criminal offense.<sup>36</sup> Society's avoidance of the issue along with the stigma associated with rape has created a culture of silence.

### C. *Bacha Bazi: The Effectiveness of Rape Laws Applied to Males*

Although the plight of female rape victims has been decried by a number of human rights organizations and received international attention, one of the greatest victims of inadequate rape legislation and the veil of silence around the issue are young Afghan boys. Despite Islamic mores forbidding extramarital sex and homosexuality, the practice of *bacha bazi* has been woven into the fabric of Afghan society throughout the years of warfare and silence. *Bacha bazi*, literally translated to "playing with boys," refers to the practice of young boys being dressed in women's clothing and sold to older men.<sup>37</sup> A common catchphrase in Afghan society sums up the phenomenon: "Women are

---

32. *Id.* at 25.

33. *Id.* at 26.

34. U.N. Secretary-General, *Follow-Up to and Implementation of the Beijing Declaration and Platform for Action: Rep. of the Secretary General: The Situation of Women and Girls in Afghanistan*, U.N. Doc. E/CN.61/2001/2/Add.1 (Jan. 25, 2001).

35. *Violence Against Afghan Women Widespread and Unpunished, Finds UN Report*, U.N. NEWS CENTRE (July 8, 2009), <http://www.un.org/apps/news/story.asp?NewsID=31401&Cr=Afghan&Cr1=Women#.VF5pAKmWTFI>.

36. *Id.*

37. Marcia G. Yerman, "The Dancing Boys of Afghanistan"—Examining Sexual Abuse, DAILY KOS (Feb. 14, 2012, 9:00 AM PST), <http://www.dailykos.com/story/2012/02/15/1064923/—The-Dancing-Boys-Of-Afghanistan-Examining-Sexual-Abuse>.

for babies. Boys are for pleasure.”<sup>38</sup> *Bacha bazi* is effectively a form of sexual slavery as the young boys are kept for entertainment and sexual purposes.

During the NATO invasion of Afghanistan, U.S. troops were confounded by the sight of young boys with older men.<sup>39</sup> Bewildered by the sexual relationships between men and boys, the military called for a study, which resulted in the report “Pashtun Sexuality” by AnnaMaria Cardinalli.<sup>40</sup> The report delved into the root causes of *bacha bazi* and analyzed how the practice continues in Afghanistan today, despite laws that seem to prohibit it. Cardinalli points to the gender divide as a potential reason for *bacha bazi*; it is more prevalent because women are isolated and more inaccessible to men.<sup>41</sup> Heterosexual relationships are only allowed within marriage, which comes at the expense of costly wedding gifts and a home.<sup>42</sup> Men are thus more prone to seek the company of young boys.

Although homosexuality is prohibited by Islam, the official religion of Afghanistan, cultural interpretations of Islamic teachings provide loopholes that allow perpetrators to skirt the law.<sup>43</sup> To identify as a homosexual is a sin punishable by death, but Cardinalli points out that it is the label and not the act that is the root of the problem.<sup>44</sup> She explains that *bacha bazi* is justified by a loose interpretation of the Islamic religion, which claims that loving a man would be a sin whereas using a man for sexual gratification is considered something different.<sup>45</sup> Under this interpretation, men engaging in *bacha bazi* are not committing a sin nor violating the laws of Islam as long as their relationship with the boy is strictly sexual in nature and not emotional. In addition to this loose interpretation, *bacha bazi* is an accepted part of society. The boys are seen as possessions, as men with means and power compete to own the “most handsome and good-looking boy.”<sup>46</sup> Enayatullah, a landowner

---

38. Fr. Dwight Longenecker, *Man Boy Sex in Afghanistan*, PATHEOS (Nov. 4, 2013), <http://www.patheos.com/blogs/standingonmyhead/2013/11/man-boy-sex-in-afghanistan.html>.

39. Robert Long, *Routine Child Rape by Afghan Police*, AM. CONSERVATIVE (July 10, 2013, 1:03 PM), <http://www.theamericanconservative.com/routine-child-rape-by-afghan-police>.

40. U.S. Army, *Pashtun Sexuality*, PUB. INTELLIGENCE (May 12, 2011), <http://info.publicintelligence.net/HTT-PashtunSexuality.pdf>.

41. *Id.* at 4.

42. *Id.*

43. *Id.* at 5-6.

44. *Id.* at 5.

45. *Id.* at 6.

46. *See id.* at 10-11.

from the Baghlan province, explained: "Having a boy has become a custom for us. Whoever wants to show off, should have a boy."<sup>47</sup>

Existing legislation has done little to combat this systematic sexual abuse of young boys that has been upheld through cultural norms, flexible interpretations of Islam, and widespread social acceptance. The crime of rape is not codified in the Penal Code, and although pederasty is a crime, the law affords little protection to young boys trapped in this cycle. The practice of *bacha bazi* is so ingrained in Afghan society that the slim legal protection the Penal Code proffers is not enough. Additionally, social mores have permeated the attitudes of law enforcement officials who turn a blind eye to the issue. One military personnel relayed the story of an Afghan colonel who was brought before a judge for violently raping a chai boy, a house servant who was also kept as a sex slave.<sup>48</sup> The colonel defended his actions by asking, "Honestly, who hasn't raped a chai boy?"<sup>49</sup> In response, the judge agreed and dismissed the case.<sup>50</sup> Men who can afford to keep a boy are usually wealthy and powerful. Additionally, they may be well-connected to government officials or are former warlords themselves. A culmination of these factors has led to the systematic abuse of young boys in Afghanistan, a society where law has little force and power vests in the hands of a select few.

### III. GREAT BRITAIN

Male rape is perhaps the easiest crime to get away with in this country. . . . If you and I decided, as two men, that we were going to go out tonight and rape a boy or a man, we could almost guarantee—99.9 per cent certain—that we're going to get away with it.

—Richie McMullen<sup>51</sup>

#### A. *History of Great Britain and Current Legislation*

From its colonization of countries such as America and India to its role in the two world wars, Great Britain has always been a major player in the global arena. Its influence has extended beyond its borders, and its

---

47. *Id.* at 11.

48. *Id.*

49. Long, *supra* note 39.

50. *Id.*

51. Simon Garfield, *When Man Rapes Man: Victims Daren't Report It, the Law Won't Recognize It, the Public Can't Understand It*, INDEPENDENT (Dec. 6, 1992), <http://www.independent.co.uk/life-style/inside-story-when-man-rapes-man-victims-darent-report-it-the-law-wont-recognise-it-the-public-cant-understand-it-but-gradually-the-taboos-around-male-rape-are-breaking-down-reports-simon-garfield-1561882.html>.



colonies have often imitated Great Britain's legal system and implemented similar laws.<sup>52</sup> Historically, a majority of Great Britain embraced Christianity as the main religion and thus the laws often had religious undertones and referenced crimes against God.<sup>53</sup> Homosexuality is considered a sin in Christianity, which was reflected in the Buggery Act of 1533.<sup>54</sup> During the reign of Henry VIII, Great Britain passed its first civil sodomy law that defined the act of buggery "as an unnatural sexual act against the will of God and man."<sup>55</sup> All male-male sexual activity was punishable by death, and buggery was decreed as "detestable and abominable."<sup>56</sup> The Buggery Act was briefly repealed in 1547 but later reenacted in 1562.<sup>57</sup> Homosexual conduct remained unlawful in Great Britain until 1967.<sup>58</sup>

The Offences Against the Person Act of 1828 amended existing legislation slightly, as the requirement of proof was downgraded to evidence of penetration only.<sup>59</sup> A follow-up to the Act in 1861 finally removed the capital charge for sodomy and stipulated that a conviction of the crime of sodomy "should be life imprisonment with penal servitude."<sup>60</sup> However, in 1885, male homosexuality was "again criminalized" under the Criminal Law Amendment Act.<sup>61</sup> The Act aimed to protect females by raising the age of female consent and suppressing brothels.<sup>62</sup> Additionally, the Act criminalized sexual acts between males.<sup>63</sup> It decreed:

Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at

---

52. Peter McKenzie QC, *A Shared Commercial Legal Heritage—Reflections on Commercial Law Reform in Former British Colonies and Dependencies*, 39 VICT. U. WELLINGTON L. REV. 553, 555 (2009).

53. Larry Houston, *Homosexuality in Great Britain Section Two: Legislation*, BEHAVIOR, & NOT A PERSON (May 11, 2013), <http://www.banap.net/spip.php?article156>.

54. *Id.*

55. *Id.*

56. *Id.* (quoting HARTFORD MONTGOMERY HYDE, *THE OTHER LOVE: A HISTORICAL AND CONTEMPORARY SURVEY OF HOMOSEXUALITY IN BRITAIN* 39 (1970)).

57. *Id.* (quoting HARTFORD MONTGOMERY HYDE, *THE TRIALS OF OSCAR WILDE* 350 (1973)).

58. *Id.* (quoting SEAN BRADY, *MASCULINITY AND MALE HOMOSEXUALITY IN BRITAIN* 94 (1st ed. 2005)).

59. *Id.* (quoting BRADY, *supra* note 58, at 60).

60. *Id.* (quoting BRADY, *supra* note 58, at 96).

61. *Id.* (quoting BRADY, *supra* note 58, at 94).

62. *Id.* (quoting BRADY, *supra* note 58, at 34).

63. *Id.* (quoting BRADY, *supra* note 58, at 34).

the discretion of the court to be imprisoned for any term not exceeding two years, with or without [hard labour].<sup>64</sup>

This development in legislation is noteworthy because it makes no distinction between public and private spheres; therefore, homosexuality is illegal in both contexts.

The next major piece of legislation was the Sexual Offences Act of 1967, which decriminalized private homosexual acts between men over twenty-one years of age.<sup>65</sup> The Act also defined rape in an effort to refine the Sexual Offences Act of 1956. The exact text reads, “A man commits rape if—he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and [a]t that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it.”<sup>66</sup>

Under English common law, a victim also had to prove a continued state of physical resistance in order to have a valid claim.<sup>67</sup> Based on the language, the rape legislation is framed in terms of female victims and male perpetrators, discounting the possibility of male-on-male rape.

Existing legislation remained in place for decades until a major change occurred in 2003. The Sexual Offences Act of 2003 abolished the offences of buggery and indecency between men in an attempt to eradicate discrimination against male homosexual sexual activity.<sup>68</sup> Prior to this, buggery and any indecency between men were punishable offences that resulted in sex offender registration if the offender was over the age of twenty and the victim was younger than eighteen.<sup>69</sup> Rape was also redefined with more gender neutral terminology with the perpetrator and victim renamed as “A” and “B.”<sup>70</sup> The elements of rape were defined as “(A) intentionally penetrates the vagina, anus or mouth of another

---

64. The Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69 § 11 (U.K.).

65. *Regulating Sex and Sexuality: The 20th Century*, U.K. PARLIAMENT, <http://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/sexuality20thcentury> (last visited Nov. 8, 2014).

66. Crimes Ordinance, 1976, c. 200, § 118 (Eng.).

67. MERRY MORASH, UNDERSTANDING GENDER, CRIME, AND JUSTICE 19 (2006).

68. *Important Information for Men Convicted of the Offences of Buggery and/or Indecency Between Men Who Are Applying for Removal from the Sex Offenders Register (Schedule 4, Sexual Offences Act 2003)*, GOV.UK, <https://www.gov.uk/government/publications/the-removal-of-offenders-convicted-of-buggery-and-indecency-between-men-from-the-sex-offender-register-schedule-4-sexual-offences-act-2003> (follow “Annex C—Guidance to applicants.doc” hyperlink) (last visited Oct. 17, 2014) [hereinafter *Important Information*].

69. *Id.*

70. Sexual Offences Act, 2003, c. 42 (Eng.).

person (B) with his penis; (B) does not consent to the penetration, and (A) does not reasonably believe that (B) consents.”<sup>71</sup>

It is important to note that up until the Sexual Offences Act of 2003, buggery laws imposed a blanket punishment over those engaging in homosexual activity, regardless of whether there was an issue of rape or consent. With the eradication of buggery laws and the revised definition of rape, male victims today are afforded far more protections than previous generations.

### *B. Cultural and Societal Perceptions of Rape*

In 1992, prior to the Sexual Offences Act of 2003, there was a rash of sexual assaults on males in London. One nineteen-year-old victim was abducted at gunpoint by three men during rush hour in the London Underground, then taken to a park and raped.<sup>72</sup> At the time, male rape was not a criminal offence under British law, and the assault was reported as “non-consensual buggery.”<sup>73</sup> The string of attacks shone a spotlight on the issue of male rape at a time when society was reluctant to acknowledge its existence.<sup>74</sup> Henry Leak, chairman of a male victim support group called “Survivors,” attempted to pinpoint the cause of society’s discomfort in facing male rape.<sup>75</sup> In an interview, he explained the victim’s reluctance to speak up about an attack was the result of societal expectations and existing legislation at the time.<sup>76</sup> Their silence stems from feelings of shame and humiliation, along with fear of being ostracized by society as being gay, weak, and unable to defend themselves.<sup>77</sup> Additionally, the law prior to 2003 may add to victims’ reluctance to step forward. Convicted rapists could be imprisoned for life, and buggery carried a maximum sentence of ten years.<sup>78</sup>

Rape in Great Britain still remains one of the most underreported crimes; it is a problem perpetuated by societal institutes and a persistent negative stigma. Research and data have shown that a vast majority of

---

71. *Rape and Sexual Offences: Chapter 2: Sexual Offences Act 2003—Principal Offences, and Sexual Offences Act 1956—Most Commonly Charged Offences*, CROWN PROSECUTION SERVICE, [http://www.cps.gov.uk/legal/p\\_to\\_r/rape\\_and\\_sexual\\_offences/soa\\_2003\\_and\\_soa\\_1956/#a09](http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/soa_2003_and_soa_1956/#a09) (last visited Nov. 8, 2014).

72. Kathy Marks, *Man Abducted from Train and Raped*, INDEPENDENT (Oct. 15, 1992), <http://www.independent.co.uk/news/uk/man-abducted-from-train-and-raped-1557478.html>.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

victims do not report their attack.<sup>79</sup> A survey of 1,600 British respondents revealed that 80% of them did not report their assault to the police and 29% did not tell anyone, not even a family member or friend, about the incident.<sup>80</sup> Studies have shown that societal attitudes towards rape have contributed to underreporting and the reluctance of victims to come forward. An overwhelming 70% of respondents in Great Britain felt that the media is unsympathetic to women victims of rape and over half believe the same is true of the legal system.<sup>81</sup> This indicates a lack of faith in both law enforcement and the media, and shows that there is still a strong stigma of shame surrounding rape, further contributing to the lack of reporting. Great Britain also has a very low rate of conviction for the crime of rape, which discourages victims from coming forward.<sup>82</sup>

In addition to the aforementioned issues, male victims face another host of problems that discourage reporting and make it difficult for them to receive justice. A recent report from February 2014 found that about one in ten of rapes in the United Kingdom are against men.<sup>83</sup> There is little statistical history in regards to male rape because it was only recognized by English law in 1994.<sup>84</sup> The *Stern Review* conducted a study of male rape in Britain and found that British society at large views rape and sexual assault as “women’s issues.”<sup>85</sup> In the minds of many, rape is still framed from the viewpoint of a male perpetrator and a female victim. Male victims may find it all the more difficult to report their assault, as society rarely sees them as the victim. The *Stern Review* found, “Very few men will access the police to report a rape, they don’t want to feel less of a man, [and] don’t want to be regarded as gay.”<sup>86</sup> There is also an undertone of discrimination woven into British society because gender assumptions make it all the harder for male victims to step forward. For instance, there still exists a general belief that men are strong and able to cope, whereas women are the weaker sex.<sup>87</sup> Male

---

79. Nina Lakhani, *Unreported Rapes: The Silent Shame*, INDEPENDENT (Mar. 12, 2012), <http://www.independent.co.uk/news/uk/crime/unreported-rapes-the-silent-shame-7561636.html>.

80. *Id.*

81. *Id.*

82. *Id.*

83. Kounteya Sinha, *Over 72,000 Men Found To Be Raped in UK Every Year*, TIMES INDIA (Feb. 13, 2014, 10:06 PM), <http://timesofindia.indiatimes.com/world/uk/Over-72000-men-found-to-be-raped-in-UK-every-year/articleshow/30355475.cms>.

84. Michael Amherst, *Rape Is Not Just a Women’s Issue*, GUARDIAN (Mar. 17, 2010, 7:00 EDT), <http://www.theguardian.com/commentisfree/2010/mar/17/stern-review-male-rape>.

85. *Id.*

86. *Id.*

87. *Id.*

victims may be deterred from reporting their assault in an attempt to adhere to these societal standards of manhood.

The cultural and societal views towards rape in Great Britain can be summed up by one man's story. Ben, an ex-soldier, was raped at knife point in Kensington.<sup>88</sup> After suffering in silence for six weeks after his attack, he finally called the Rape Crisis Centre.<sup>89</sup> The woman who answered was dumbfounded and responded, "We're for women."<sup>90</sup> He then relayed his story to his doctor, who only offered him sleeping pills as a solution.<sup>91</sup> In a final blow, another doctor asked Ben, "Is this the first time that a pick-up has done this to you?," inferring that Ben was a homosexual because of the rape.<sup>92</sup> Society in Great Britain still regards male rape with skepticism and disbelief, and the effects can be felt in legislation. Male rape was not recognized as a crime until this past decade when legislation was amended to protect male victims of assault.

*C. Government Intervention: The Effectiveness of Rape Laws Applied to Males*

The cultural and social perceptions of rape as a gendered crime have hindered the effectiveness of rape laws in Great Britain as applied to male victims. *British Crime Survey* estimates that up to 15% of the adult population of the United Kingdom has been sexually abused in childhood. This includes 11% of young men. The survey additionally finds that 1.5% of men have suffered a serious sexual assault at some point in their lives with 0.9% reporting rape.<sup>93</sup>

The *Stern Review* also mentions the issue of male victims and female perpetrators, which runs contrary to the definition of rape as currently found in the law; the Sexual Offences Act of 2003 makes a specific mention of penetration by male genitals.<sup>94</sup> This seems to suggest that perpetrators are inherently male and that males cannot be victimized by females.<sup>95</sup> The report claims that society's set view of male perpetrators and female victims "maintains a masculine discourse in

---

88. Garfield, *supra* note 51, at 3.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 3-4.

93. *Statistics*, SURVIVORS UK, <http://www.survivorsuk.org/male-sexual-violation/statistics> (last visited Nov. 8, 2014).

94. Sexual Offences Act, 2003, c. 42 (U.K.) ("(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.").

95. Amherst, *supra* note 84.

which ‘real men’ are agents and never victims.’<sup>96</sup> The wording of the legislation and society thus defines “masculine behaviour” in a distinctively aggressive manner and turns a blind eye to the suffering of male victims.<sup>97</sup> This is a disservice to men in two ways: first, by inherently casting them in the role of the villains and, second, by turning a blind eye to the fact that they could be victims themselves.

However, Great Britain’s government is committed to an open discussion of the issue and finding ways to aid male victims. In February 2014, the government announced its intentions to commit £500,000 to provide services such as counseling to male victims in an effort to encourage them to come forward.<sup>98</sup> The fund will also provide support to victims who were under the age of thirteen at the time of their attack.<sup>99</sup> This is a groundbreaking development because it is the first fund of its kind specifically designated to aid male victims of sexual assault and to meet their specific needs.<sup>100</sup> Damian Green, the victims’ minister, has high hopes for progress through the new fund. He reiterated the government’s commitment by saying:

[W]e must help all victims to cope, and as far as possible recover, from the impacts of crime—especially when it is as serious as rape or sexual abuse. Despite large number[s] of sexual assaults against men, many choose not to come forward, either to report the crime or seek the support they need. I am determined to help break the silence on a subject still seen as taboo.<sup>101</sup>

Green also noted that average sentences for male rapists have increased and that Britain is in the process of raising sentences for violent crimes.<sup>102</sup> While the establishment of this fund has helped raise awareness of male rape, it is also important to note that it is effective only in retrospect and does not aid in crime prevention. However, with this fund, Great Britain is making inroads in giving males greater protection against rape and recognizing that male rape is an issue that the country should actively act to combat.

---

96. *Id.*

97. *Id.*

98. Sinha, *supra* note 83.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

## IV. UNITED STATES

A. *History of the United States and Current Legislation*

Historically, the feminist movement in the 1960s and 1970s played a large role in the reform of rape laws in the United States.<sup>103</sup> Prior to 1970, common law defined *rape* as the “unlawful carnal knowledge of a woman by force and against her will.”<sup>104</sup> Rape was narrowly construed to include only assaults by a male perpetrator on a female victim and disregarded marital rape as a crime.<sup>105</sup> Traditionally, rape law hinged upon the issue of a woman’s consent and focused on female victims only.<sup>106</sup> Women’s rights activists sought a reform of rape law, arguing the definition was too narrow in its focus on vaginal-penile penetration and proposing that the laws should be expanded to protect male victims.<sup>107</sup> Activists succeeded in altering the standard of proof for rape cases and evidentiary issues, but it was not until recently that male victims were included in the legislation.

In 2012, the FBI, under the Obama administration, redefined rape and departed from the norm that had been in place since 1929.<sup>108</sup> Previously, *rape* was defined as the “carnal knowledge of a female forcibly and against her will,” including a requirement that the victim physically resisted the attack.<sup>109</sup> The new rewrite defines *rape* in a way that is more inclusive of victims.<sup>110</sup> It no longer frames rape in terms of gender but defines it 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.”<sup>111</sup>

The new definition is revolutionary in its neutral wording of the crime, deviating from previous definitions by removing any preconceived gender biases from rape. Under the new law, victims and perpetrators can be of any gender.<sup>112</sup> Additionally, the revised definition

---

103. Stacy Futter & Walter R. Melbane, Jr., *The Effects of Rape Law Reform on Rape Case Processing*, 16 BERKELEY J. GENDER L. & JUST. 72 (2001).

104. *Id.* at 74 (quoting BATTLE MEM’L INST. LAW & JUSTICE STUDY CTR., FORCIBLE RAPE 5 (Dep’t of Justice ed., 1978)).

105. *Id.*

106. *Id.* at 75.

107. *Id.*

108. Gina Simmons, *The FBI Redefines Rape and Why It Matters*, FORBES (Jan. 18, 2012, 11:17 PM), <http://www.forbes.com/sites/crime/2012/01/18/the-fbi-redefines-rape-and-why-it-matters>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

covers instances where a victim may be unconscious, disabled, under the influence or drugs, or too young to give consent.<sup>113</sup> The departure from the old definition of rape signals a movement towards acknowledging that rape victims can be of any gender and that rape can occur in a variety of situations. It also represents greater protections for male victims of rape in the United States, as legislation now recognizes that anyone can be a victim regardless of gender.

Other notable legislation includes the Prison Rape Elimination Act of 2003, the first U.S. federal law that specifically deals with the sexual assault of prisoners.<sup>114</sup> The Act enforces a “zero-tolerance” policy towards prison rape.<sup>115</sup> It also works on developing national standards for prisons to safeguard prisoners from sexual violence.<sup>116</sup> The legislation used numbers to combat sexual violence in prisons by making data more available to administrators.<sup>117</sup> The laws have been evolving to address different types of victims and scenarios that traditionally were left out of rape legislation, signaling an effort to eliminate or rewrite laws that were underinclusive or ineffective.

### *B. Cultural and Societal Perceptions of Rape*

Traditionally, the archaic definition of *rape* paved the way to victim blaming.<sup>118</sup> Reports have shown that many survivors of rape recount more suffering from the treatment of friends and family than from the incident itself.<sup>119</sup> In the United States, male victims often face the same stigma as female victims along with other issues associated with societal notions of masculinity. According to statistics including sexual abuse in prisons in America, more men are raped than women.<sup>120</sup> According to a Department of Justice report in 2008, an estimated 216,000 male inmates were sexually assaulted while incarcerated in comparison to the 90,479 rape cases outside of prison.<sup>121</sup>

---

113. *Id.*

114. Anna Clark, *Why Does Popular Culture Treat Prison Rape as a Joke*, ALTERNET (Aug. 16, 2009), [http://www.alternet.org/story/141594/why\\_does\\_popular\\_culture\\_treat\\_prison\\_rape\\_as\\_a\\_joke](http://www.alternet.org/story/141594/why_does_popular_culture_treat_prison_rape_as_a_joke).

115. Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972.

116. *Id.*

117. *Id.*

118. Simmons, *supra* note 108.

119. *Id.*

120. *More Men Are Raped in US Than Women, Figures on Prison Assaults Reveal*, DAILY MAIL (Oct. 8, 2013, 5:25 EST), <http://www.dailymail.co.uk/news/article-2449454/More-men-raped-US-women-including-prison-sexual-abuse.html>.

121. *Id.*



Despite the gravity of these statistics, American popular culture often treats prison rape as a joke and a source of humor.<sup>122</sup> A common catchphrase, “Don’t drop the soap,” makes a mockery of prison rape and has been used in numerous online videos, late night talk shows, and movies as a comedic joke.<sup>123</sup> Just Detention International, a nonprofit organization once known as Stop Prison Rape, challenges societal attitudes towards rape and claims that “[h]umor is part of the cultural attitude that (prison) is the one place where rape is okay.”<sup>124</sup> Additionally, the report notes that there is a relative silence about rape in women’s prisons and that this mockery is unique to male inmates and victims.<sup>125</sup>

U.S. District Judge Reggie B. Walton attributes this type of humor to society’s attitude of indifference towards the incarcerated.<sup>126</sup> Society may view the incarcerated in a dehumanized manner and cast them aside from the rest of society as a punishment for their crimes. As a result, any sexual abuse they suffer in prison is their own fault due to their wrongdoing.<sup>127</sup> Popular culture portrayals of prison rape also take root in homophobia, where discomfort with male-male sexuality turns it into a punchline or a joke.<sup>128</sup> Michela Bowman, the Project Director for the Vera Institute for Justice, criticizes this lighthearted view of male rape and claims, “The general apathy certainly serves to perpetuate (prison rape).”<sup>129</sup>

A similar study of prison sexual assault in the United States found that this attitude towards prison rape makes it difficult for victims to report assault and receive justice. Unless there is an obvious physical injury, inmates’ complaints tend to be ignored and their requests for protection denied.<sup>130</sup> Gay inmates, or inmates perceived to be gay, have it especially difficult as administrators may adopt a “what did you expect” attitude.<sup>131</sup> The association of anal intercourse with homosexuality blurs the line between male rape and consensual sex.<sup>132</sup> A study found that attitudes towards male rape in prison can be traced back to ignorance,

---

122. See Clark, *supra* note 114.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Philip Rumney, *Policing Male Rape and Sexual Assault*, 72 J. CRIM. L. 67, 74 (2008), available at <http://eprints.uwe.ac.uk/12436/1/jcla.72.1.67%5B1%5D.pdf>.

131. *Id.*

132. *Id.* at 79.

homophobia, and insensitive social attitudes.<sup>133</sup> As a culmination of these factors, male rape is seen as a joke and is not considered a major issue by much of society.

*C. Prison Rape: The Effectiveness of Rape Laws Applied to Males*

Although recent years have seen an increase in legislation targeting the problem of male rape, it remains to be seen how effective these laws are in the context of America's prisons. The prison environment is unique in nature because it creates an isolated world away from the rest of society. American prisons have been called an "authoritarian nightmare" because they are overcrowded and seen as a breeding ground for "infinite violence."<sup>134</sup> In 2003, President Bush signed the Prison Rape Elimination Act into law.<sup>135</sup> The Act established a zero-tolerance standard in correctional facilities and instructed the Bureau of Justice Statistics to review statistics on the incidents and effects of prison rape.<sup>136</sup> The law also established a Review Panel on Prison Rape and directed the Attorney General to develop grants to assist each state in its execution of the Act.<sup>137</sup> This new legislation, combined with the recent redefinition of rape to include male victims, suggests that males are slowly gaining more protection against assault in the United States.

Male rape in prisons represents a different sort of problem given the setting and circumstances. Studies of America's penal system have revealed shocking statistics, citing numerous instances of sexual misconduct by staff members in juvenile facilities, a disproportionate number of mentally ill inmates who are abused sexually, and frequent occurrences of sexual assaults in military detention facilities.<sup>138</sup>

Despite current legislation, 3.2% of all people in jail, 4% of state and federal prisoners, and 9.5% of those in juvenile detention reported having been sexually abused.<sup>139</sup> Statistics showed a drop in the number of reported abuse in 2011 from 209,400 to 200,000, but statisticians have

---

133. *Id.* at 80.

134. James Joyner, *Men Outnumber Women Among American Rape Victims*, OUTSIDE THE BELTWAY (Feb. 5, 2012), <http://www.outsidethebeltway.com/men-outnumber-women-among-american-rape-victims>.

135. Andie Moss, *The Prison Rape Elimination Act: Implications for Women and Girls*, NAT'L PREA RES. CTR. (Jan. 1, 2007), <http://www.prearesourcecenter.org/sites/default/files/library/59-preaimplicationsforwomenandgirls2007.pdf>.

136. *Id.*

137. *Id.*

138. David Kaiser & Louisa Stannow, *The Shame of Our Prisons: New Evidence*, N.Y. REV. BOOKS (Oct. 24, 2013), <http://www.nybooks.com/articles/archives/2013/oct/24/shame-our-prisons-new-evidence/>.

139. *Id.*

hypothesized that the decline does not indicate a falling rate of abuse, but is actually attributed to the decrease in the number of people incarcerated.<sup>140</sup> Additionally, legislation has had little impact on the advent of private prisons, which are often called “prisons for profit.”<sup>141</sup> Prisoners are allotted less and less physical space, leaving room for sexual assault and opening up inmates to the potential of more abuse.<sup>142</sup> In situations like these, even the redefinition of rape and the Prison Rape Elimination Act can do little to combat the situation. Definitions and statistics afford little protection in an overcrowded system where male rape is not taken seriously and victims are often disregarded.

## V. ANALYSIS

A survey of rape laws in Afghanistan, Great Britain, and the United States has revealed a host of similarities and differences in each country’s legal system and society. Several trends have emerged, such as the role of history and religion in lawmaking and the impact of social norms. Legislation in all three countries was influenced by interpretation of religious rules; Afghan law was greatly shaped by Islam just as Great Britain was impacted by its Christian roots. Additionally, all three countries have seen growing attention to the problem of rape from a female victim’s perspective and a substantial amount of studies on the issue. In particular, the United Nations has conducted a host of studies on the problems Afghan women face today.

A troubling trend shared by the three countries is the lack of focus on male victimization in society and the curious taboo cast upon the topic. As previously discussed, this varies in degree by country. In Afghanistan, sexual intercourse between males is illegal yet the practice of *bacha bazi* is widely accepted.<sup>143</sup> The young male victims are rarely seen as victims at all because the practice has gained a stronghold in Afghan society.<sup>144</sup> Similarly, society’s lighthearted approach towards male rape in the United States serves to rob male victims of the legitimacy of their claims.<sup>145</sup> In Great Britain, there appears to be a growing trend towards aiding male victims of rape and a societal commitment to more open discussion and greater resources.<sup>146</sup> Yet, this

---

140. *Id.*

141. Joyner, *supra* note 134, at 3.

142. *Id.* at 2.

143. *See supra* text accompanying notes 40-50.

144. *See supra* text accompanying notes 40-50.

145. *See* Clark, *supra* note 114.

146. *See supra* text accompanying notes 98-100.

development is still in its beginning stages, and there still remain prejudices and misconceptions to overcome.<sup>147</sup> In America, legislation affords male victims certain protections, but similar prejudices persist as in Great Britain.<sup>148</sup> Altogether, there is a measure of progress; however, more can be done to aid male victims.

#### A. *Legislative Reform*

Though it is one of the world's oldest countries, Great Britain only recently reformed its laws to recognize the crime of male rape.<sup>149</sup> Legislative reform is one of the most powerful ways to aid male victims of assault. For example, Great Britain amended its legislation to more gender-neutral language and, in doing so, recognized that males can also be victims.<sup>150</sup> In all three countries, there was a pervasive notion in society that rape is a gendered crime with male perpetrators and female victims. By amending criminal codes and existing laws to make the crime of rape more gender-neutral, there would be a step forward in recognizing male rape as a legitimate offense and a crime just as deserving of punishment as female rape.

Aside from rewording legislation to break down the gender connotations attached to rape, another way to give male victims greater protection is by passing legislation pinpointing the principle that rape is gender-neutral. Rewording legislation will make the law more equal in its application, but specific language indicating that the gender of victims and perpetrators is not dispositive of victimization or criminal responsibility further serves to dissipate existing stereotypes. Specifically, Afghanistan has yet to criminalize male rape in its Penal Code. Great Britain and the United States have only expanded the definition of rape to include male victims in recent years. The law is often the loudest voice with the ultimate authority in society, and by including males as potential victims of sexual assault, it is not only lending credence to the issue but also ensuring equal protection for all against rape.

#### B. *Education*

An analysis of rape legislation and cultural perspectives has indicated that society's viewpoints have an extremely large influence on

---

147. *See supra* text accompanying note 101.

148. *See supra* notes 118-120 and accompanying text.

149. *See Important Information, supra* note 68.

150. *See* Sexual Offences Act, 2003, c. 42 (Eng.).

the crime of rape, the treatment of victims, and existing legislation. History has shown that society's reluctance to address rape in general has hindered legislation and it is only in recent times has there been a more open discussion about it. In countries like Afghanistan, notions of sexuality and gender roles have led to the institution of *bacha bazi* flourishing.<sup>151</sup>

One way to combat the issue and impact rape legislation could be greater focus on education. It could begin with sex education in the classroom including a thorough explanation of assault and how it impacts both males and females. The culture of silence around rape can be combated with a more open, honest discussion of rape from an early age, thus contributing to a better-informed society. Not only will victims recognize the wrong that has been done to them and have incentive to step forward, but society as a whole can work together to protect its men and women.

Another component to combating male rape is the education of young children about what is wrongful sexual conduct. For example, if young boys in Afghanistan are educated about appropriate sexual conduct from an early age, *bacha bazi* would become less acceptable in society. A study of the three countries has shown that, in some communities, male rape is not even accepted as a crime or an issue due to ill-conceived notions of sexual conduct and the idea that men cannot be victims. Early education can be used to combat these prejudices and afford better protections to men and women alike. Continued education can reinforce these values. Many college campuses now conduct sexual-violence prevention programming. Evidence shows that anti-violence programming has a positive effect on an individual's attitude towards and knowledge of how to deal with sexual violence.<sup>152</sup>

### C. Social Services

As existing research has indicated, male victims of rape face very different issues from female victims. While there are a number of resources available to females, there is a need for more support for male victims. Great Britain has led the way in this endeavor by earmarking funds specifically for male victims in a bid to encourage men to come

---

151. See *supra* text accompanying notes 41-43.

152. See Victoria L. Banyard, Elizabeth G. Plante & Mary M. Moynihan, *Rape Prevention Through Bystander Education: Bringing a Broader Community Perspective to Sexual Violence Prevention*, U.S. DEP'T OF JUST. 150 (Feb. 2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/208701.pdf>.

forward to receive the help that they need.<sup>153</sup> Each instance of assault is different and personal, and the inherent differences between men and women create a need for specialized services for male victims. Although social services for victims do not help in the prevention of rape, it is still very much a necessary part of aiding male victims. Additionally, setting aside counseling and therapy services specifically for male victims serves a deeper purpose because it recognizes male rape as an issue that we, as society, need to address.

## VI. CONCLUSION

A comparative study of rape legislation in Afghanistan, Great Britain, and the United States has revealed similar trends but also individualized problems that each country must face. Commonalities include a veil of silence upon the issue of male rape and a social taboo on the subject. Religious and social influences have played a large role in shaping legislation both in the past and in the current era. The socially ascribed gender roles of males and females in all three countries have also made it more difficult for male victims to step forward due to fear of backlash and aspersions cast on their manhood.

Differences can be seen mainly in the three countries' approach to legislation addressing rape. While Great Britain and the United States have made inroads in criminalizing male rape in their legislations, Afghanistan has yet to recognize male rape as a crime.<sup>154</sup> In recent years, the governments of Great Britain and the United States have indicated a commitment towards rooting out rape as evidenced by new legislation that both redefines existing rape laws and closes the gap in sentencing between male and female victims.<sup>155</sup> In these two countries, the law is evolving in a way that gives male victims greater protection. In contrast, the laws of Afghanistan have skirted the issue of male rape all together in the country's Penal Code.<sup>156</sup> Not only is male rape unaddressed, but the laws based on antiquated religious codes leave gaping holes that are open to interpretation.<sup>157</sup> This weak legislation is not enough to combat the social mores that have made the rape of male children so widely accepted, and much work remains to be done.

Fortunately, the global community is becoming more in tune to the issue of male rape. Perhaps other countries will be able to follow the

---

153. *See supra* text accompanying notes 98-100.

154. *See supra* text accompanying notes 28-29.

155. *See supra* text accompanying notes 98, 114.

156. *See supra* text accompanying note 21.

157. *See supra* text accompanying notes 18-21.

United States' and Great Britain's lead in reforming legislation to address this problem. Because each citizen looks to the law for protection, each should be treated equally in their country's legislation. With growing attention from government and society's commitment to reform, male victims may finally receive the protections and justice that they so deserve.