

Is This Assault?

Assault means non-consensual physical or sexual acts done by one person to another. For many of us, it can be hard to determine if the acts done to us are assault or not. These guidelines are intended to help you differentiate between consensual kink and actions that constitute assault.

1. It can be considered physical or sexual assault if...

- Your withdrawal of consent or safeword/safe sign is ignored and intimate activity or use of force or restraint (BDSM) continues.
- Your partner goes beyond the limits of what you agreed to do before you started the encounter, including the intensity of the activities or any injuries that occurred.
- Your partner pressured, tricked, threatened, coerced, or forced you into sexual activities or a sexual relationship.
- You are incapable of giving consent, i.e. under the influence of mind-altering substances, in a mental health crisis etc.
- You are seriously injured or disfigured during the act (even if you consented to this).
- You are choked / strangled, even if you consented to this prior to the encounter (choking cannot be legally consented to due to the ultrahazardous risk of death or serious injury).
- You are discouraged from, or unable to, negotiate the actions prior to the encounter.
- You are subjected to Intimate Partner Violence (IPV) - a pattern of assault and coercive behaviors such as verbal and emotional abuse that is used to control you.

2. My limits were violated, but everything else we've done was consensual – is it still assault?

It may be assault if any intimate activity or use of force or restraint happens that is not agreed to prior to starting, or if it goes beyond what you consented to, or your previously stated limits. Someone also might violate your consent through poor communication, misunderstanding, technical accidents, lack of knowledge, or lack of expertise. Errors, miscommunications, and misunderstandings can occur if you don't fully discuss the desires and limits of those involved, taking into account familiarity with each other and the activities planned.

3. If I don't resist physically, does that mean it isn't rape or sexual assault?

Physical resistance is not always possible or safe. Survivors often shut down in response to assault, emotionally and physically, and many survivors never resist physically. This can be an automatic response and a part of the body's survival system. It is still assault if you withdraw consent or safeword, but don't physically resist.

4. Is it rape or assault if I've had sex or previously engaged in BDSM with the person who violated my consent?

Even if you have done certain things with someone before, you have the legal right not to do those activities again. If you have done BDSM with someone before, that doesn't mean that you have automatically given blanket consent to doing these actions with them in the future (i.e. being touched by them sexually). In other instances, you may agree that tacit or ongoing consent to those particular activities exists until you withdraw consent. But legally you can always withdraw your consent, and if you withdraw consent to any activities, then your partner has to stop, even in a power exchange relationship.

5. I was intoxicated and/or my partner was intoxicated, does that mean it wasn't rape or assault?

A person's state of mental impairment is not a defense for committing assault. If you aren't of sound mind, then you can't consent to sexual activities. If you can't drive, you can't consent. If you're taking prescription medication that prohibits driving, then you can't consent. While it is up to you to define your experiences for yourself, and some people choose to do kink under the influence of substances, legally, this may be viewed as assault automatically because of the incapacitation.

6. Am I partially to blame if I said "yes" up until I said "no"?

Most survivors of assault never said "no." If a partner deliberately goes beyond what you agreed to, violates your limits, or continues an activity after you withdraw consent, then it is assault. Many people who have experienced rape, assault, or abuse blame themselves, and that's a normal way to feel, but the person responsible for the harm that you suffered is the person who harmed you. When you are doing BDSM, it is the bottom's ethical responsibility to be clear about their limits and to communicate that consent is withdrawn, and it's the top's legal and ethical obligation, even if the bottom's communication is not clear, to stop what is happening until consent is reaffirmed.

7. What if I don't say no during the BDSM activities, even though my previously negotiated limits were violated?

If you negotiated limits prior to the encounter, and a partner ignored those limits, then your consent was violated. Sometimes people are in subspace or are otherwise in some mental state that interferes with the ability to withdraw consent or safeword. If this happens to you and you feel violated, your feelings of violation are valid. However, if you involve the criminal justice system, it may be more difficult to prove there was criminal assault unless you have evidence (email or text messages of the limits) and/or witnesses to the activities and your prior negotiation.

8. What if the BDSM activity wasn't negotiated or wasn't explicitly forbidden, and when it happened, I didn't say no for some reason?

BDSM activities must be agreed upon in advance as required by Explicit Prior Permission, the legal framework for consent to kink. Predators often try to take advantage of loopholes by doing things while in the midst of your encounter that they haven't brought up or discussed with you prior to starting. This is one reason to make it clear that you don't ever re-negotiate to add acts in the midst of an encounter. You may not be of sound mind to be able to consent, or you could be in such a submissive headspace that it's difficult or impossible to protest.

9. Can I say no to something if I consented to a power exchange contract?

Power exchange contracts are not legal contracts. A power exchange contract is like a commitment vow, it's an agreement that lasts as long as everyone involved is okay with it. You always have the right to leave a relationship. If you are doing BDSM or engaged in a power exchange relationship and want to stop, you have the right to insist that your partner(s) stop. A pattern of consent violations, including emotional abuse, stealing, and threatening behavior, may be considered domestic violence and can be reported to the police.

10. What if I consent to do something, but I didn't like it?

This is not assault or a consent violation. If you consented to an activity/activities but decide afterwards that you didn't like what happened or regret doing it with that particular person, then this is a learning experience. It's a common part of the process of exploring your sexuality to make mistakes or missteps.

11. What if I gave consent but was injured?

Under Explicit Prior Permission, serious injury is considered to be assault even if you consented to the act(s). For example, choking can cause death, which is not legally allowable, so consent is not a defense to choking. You also aren't allowed to cause permanent, serious disfigurement (this doesn't mean marks or bruises that eventually resolve or minor injuries like a keloid). You also aren't allowed to cause lasting damage to an arm, leg or organ, like the eye.

12. Is it still assault if I became sexually aroused?

Non-consensual sexual activities can lead to unwanted sexual arousal or even to orgasm. This response does not indicate that you consented to the acts. Someone may try to claim that the acts were desired because you showed signs of arousal, however the physical response of arousal doesn't mean that you are giving consent to something you haven't discussed. This is true for men, women and non-binary people; the presence of an erection or lubrication should not be considered "consent."