

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 1 [2025] | Page 46 - 52

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SEXUAL VIOLENCE AND THE IDEA OF MASCULINITY: REDEFINING LEGAL NARRATIVES AND CHALLENGING STEREOTYPES

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ABSTRACT

The decriminalization of Section 377³, from the IPC (now BNS) made a major impact on the LGBTQ+ Community in India, through the landmark Judgement of the Supreme Court of India *Navtej Singh Johar v. Union of India*⁴. This decision of ratification led to the legal gap in protecting male rape victims of sexual assault. This paper explores the consequences of decriminalizing consensual same-sex relations in the LGBTQ+ community and its impact on the men and transgender communities. It highlights the current laws and how it overshadows the fact that these laws related to rape are not gender-neutral and the need for gender-neutral laws.

Keywords: *Decriminalization, consensual same-sex relations, gender-neutral law.*

INTRODUCTION

Rape. A word very common to India. “Rape is a cultural sore spot...something that needs our attention but we are too afraid to touch”⁵. Gone are the days when rape was regarded as unholy and a sin and it is peculiar how it's very rife in India. Rape was once considered to be peak barbarianism but now it is not the same anymore. It undressed the principles of humanity and how the concept of consent is being questioned. Broadly speaking, rape is sexual intercourse by a man without her consent. It is to be noted how “his” consent isn't a part of this meaning.

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³ Section 377 of Indian Penal Code (IPC)

⁴ Navtej Singh Johar v. Union of India judgment (AIR 2018 SC 4321)

⁵ Mithu Sanyal, Rape from Lucretia to #metoo (London: Verso; 2019)

The stain in the society of men raping men is a very complex. It is intervened with the stigma of men about masculinity, sexual orientation, and the gender-based expectations. This leads to unreported rape cases and lack of support for the victims. There are certain things that are believed can happen to men, they are the victims to sexual violence and rape. But the need to talk about it and awareness lacks in society. Nobody is interested in knowing stories of men getting raped. The controversy revolves around the society in a loop finding no solutions for the male victims.

"You do not lose innocence when you learn about terrible acts; you lose your innocence when you commit them. An open culture of tolerance, honesty, and discussion is the best way to safeguard innocence, not destroy".⁶

The traditional expectations of men about being strong, muscular, rigid, and dominant lead to the misconception about men. Although it is considered that only women are raped by men, what about the men raped by men? What laws are bound to protect the male rape victims?

BODY

Rape as defined by the Bharatiya Nyaya Sanhita, 2023 (section 63) includes the definition of rape to be like

A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions: (i) against her will;

(ii) without her consent⁶;

⁶ Section 63, Bharatiya Nyaya Sanhita, (BNS), 2023

... and five more.

This section includes how a man is said to commit rape and the victim is a woman. The usage of word “vagina” of a woman excludes the possibilities of other kinds of rape. It is erratic when we notice how this law doesn’t include the notion of a man being raped by another. The legislation has indeed made this meaning of rape centered around one gender only. The issue is not just about victimization but something above that. The definition of rape according to BNS is not very inclusive as it eliminates the concept of men raping other men and also the transgender community.

WHAT ABOUT MEN?

The offender of rape is considered to be a man and the victim of rape is considered to be a woman. However, the whole definition is considering the rape of only women and there’s no provision for the rape of males. It implies that in India there’s no particular law if a male rapes another male. Anyone, regardless of age, gender or sexual relationship, can be raped.

To begin with, it is necessary to admit that the victims and offenders of Rape can be of any sex, and rape crime can occur anywhere, such as in schools, offices, prisons, workplaces, Educational Institutions, etc. But the law protecting and justifying the rape against men is not found in India’s legal system and is hanging by thread, seeking support for the rape victims.

SOCIETAL EXPECTATIONS OF MEN

Men are considered to be strong enough to protect themselves from any assault or physical harm. He is made or expected to defend, facing all the consequences without any complaint, because he is a “Man”. Due to this, most male rape victims hide in the shadows. Rape is a crime, which is considered to be done by a man against a woman. But it is necessary to also consider that a crime is a “crime”, regardless of gender and a victim is a “victim”. It is high time now, to understand the need for a legal provision for such a heinous crime. Because we live in a world where people assume that a man can defend himself by having a strong male personality and authority, it is challenging for male rape victims to report sexual assault.

As a result, most people are afraid in disclosing sexual abuse will cast doubt on their sexual identity or that they will be viewed as gay if a male rapes them. When a man is raped, he is robbed of his

dignity, he is tagged all along his life to be weak and fragile. His manliness is questioned, in the eyes of society.

Activist Aniruddhan Vasudevan highlights this issue, stating, "*Male rape survivors are a silent community. I do not know of organizations that work with male survivors of rape*".⁷

This simulation might help clear some fog around this issue

Imagine being a man in a country like India, which is known for being patriarchal for eternities, and being raped by another man. The very thought of it might send a weird sensation down the spine. The societal stigma around masculinity makes this simulation obscene. In a society that celebrates masculinity, it becomes difficult to report or speak about this issue. But the hour's late and this needs attention.

There are various effects of rape some of which include depression, anxiety issues, powerlessness, embarrassment and also rape trauma syndrome, etc. Rape trauma syndrome is a term that health experts deem to be common reactions that occur for both men and women after sexual assault. It is not an illness or abnormal reaction - it is a normal response to an abnormal, traumatic event. Gay men are mostly assaulted as part of a gay bashing, and Indigenous men are also at a higher risk for sexual victimization because sexual assault can occur as a part of a hate crime as well. There are instances in which men are raped.

INSTANCES

After the Delhi rape case⁸, the definition of rape has widened due to *Justice Verma committee report, 2013*⁹ but the need of gender inclusivity remains. The report asked for parliament to make the laws neutered. The case of *Bodhisatwa Vs. Subhra Chakraborty*¹⁰ the SC stated that rape is a crime against basic human rights and infringes Article 21.¹¹ *Sudesh Jhaku Vs. K.C. Jhaku*¹² was the first case ever in which gender neutrality in rape laws was discussed by the Supreme Court. The court

⁷ Aniruddhan Vasudevan, Lacking Support, Male Victims Stay Silent (2013) <https://timesofindia.indiatimes.com/city/chennai/lacking-support-male-rape-victims-stay-silent/articleshow/18524668.cms>

⁸ Mukesh & Anr vs State for Nct Of Delhi & Ors.

⁹ Justice Verma Committee Report

¹⁰ Bodhisatwa Vs. Subhra Chakraborty

¹¹ Article 21, Constitution of India

¹² Sudesh Jhaku Vs. K.C. Jhaku

stated that sexually assaulted men should be given the same protection of the law as given to female victims.

A 23-year-old man committed suicide after being allegedly sexually assaulted by a group of four acquainted in Gorakhpur. According to the report, the victim knew one of them through social media. The assault reportedly occurred at a hotel on June 17, 2024. The perpetrators recorded the assault and demanded money from the victim and threatened to publish the video online if their demands were not met. The police lodged an FIR under sections 377 (unnatural offenses), 384 (extortion), 506 (criminal intimidation), and other relevant provisions of the Indian Penal Code. Few hours after this, the victim committed suicide.¹³

A 36-year-old man was gang-raped in Navi Mumbai while he was out to buy cigarettes. The victim had to undergo several surgeries, according to media reports. Vashi police said that they were looking for five suspects, who were possibly drunk and under the influence of drugs, according to the victim. The police statement said that the suspects kidnapped the victim, dragged him behind some trees, sexually assaulted him, and beat him up.¹⁴

GLOBAL PERSPECTIVE

There are countries who have worked on gender neutral laws. In numbers almost 63. The question arises on what about India's stance on this is. India needs to acknowledge rape perpetrated against women, men and the transgender communities. Various countries have made their laws all-inclusive. United Kingdoms, South Africa and USA being the leading ones. It is necessary to know where other countries and their judicial systems stand on this topic.

1. In the UK, under the Sexual Offences Act, 2003¹⁵, sexual offences are dealt with the usage of words "A", "B" instead of the conventional pronouns of men and women. Male rape became

¹³ Youth commits suicide after being sexually assaulted by 4 men in UP's Gorakhpur, <https://www.hindustantimes.com/india-news/youth-commits-suicide-after-being-sexually-assaulted-by-4-men-in-ups-gorakhpur-101718624943747.html>

¹⁴ Navi Mumbai: Man gangraped after stopping for cigarette on way home, <https://indianexpress.com/article/cities/mumbai/navi-mumbai-man-gangraped-after-stopping-for-cigarette-on-way-to-home-6029383/>

¹⁵ Sexual Offences Act, 2003 UK

recognized in law in 1994 but the 2003 legislation made victims of rape, gender-neutral. But there is no mention of separate mention of gender under this law.

2. In the South Africa's legal system, they define rape as an offense committed by any person without their consent regardless of their gender.

The Criminal law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Amendment Act or SOAA) protects any person who has experienced any of the following:

Rape occurs when a person forces another to have sexual intercourse without their consent. This is a crime and must be reported. The SOAA also makes it a crime for a person to force another person to rape someone. This is known as compelled rape.¹⁶

All these judicial systems gave male and transgender communities a safe place, putting in laws not based on genders but on the crime.

INDIA'S STANCE

India being the country it is, fights for gender equality quotidianly. When people can fight for equal paychecks, equal legal recognition seems a minor issue. But the onus of understanding this problem lies on the legislation.

India has previously rejected a bill for the amendment of rape laws. The bill aimed to protect the rights of persons vulnerable to sexual offences regardless of their gender. Criminal Law (Amendment) Bill, 2019¹⁷ was an attempt to make gender neutral laws in India. The bill being drafted by a Senior lawyer, KTS Tulsi, brought in provisions for laws that protected the victims of rape with no gender barrier. The bill wished amendments in the Indian Penal Code, 1860 (now BNS, 2023), the Code of Criminal Procedure, 1973 (now BNSS, 2023) and the Indian evidence act, 1872 (now BSA, 2023) "Law needs to be balanced. The balance has been disturbed. All sexual offences should be gender neutral. Men, women, and other genders can be perpetrators and also victims of these offences. Men, women and others need to be protected," Tulsi said.¹⁸ The parliament chose to not to address the issue and let the laws remain as they were. The legislations don't have to happen only when the crime reaches its acme. Throwing light over this aspect of

¹⁶ The Criminal law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Amendment Act or SOAA)

¹⁷ The Criminal Law (Amendment) Bill, 2019
<https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/1427LS%20As%20Int....pdf?source=legislation>

¹⁸ Bill to make sexual crimes gender neutral introduced in Parliament, <https://www.indiatoday.in/india/story/bill-to-make-sexual-crimes-gender-neutral-introduced-in-parliament-1568504-2019-07-13>

rape seems. The need for succinct changes in the laws was observed before, is being observed today and will be sought till there is a proper measure taken.

CONCLUSION

Summing up, it is necessary to include gender-neutral rape laws. The decriminalization of section 377, has left men and the transgender communities without any legal provision about the crime. In the present times, it is important to bring light to this matter. Sexual offences of any kind and against any person is legally considered rape in many countries but protecting one sex alone in India may increase the crime rate and leave few sects of people out of legal protection. The laws should be all-inclusive regardless of sex. Neutering the laws won't dilute the protection of female victims but only put the men and transgenders in the radar. Adequate legal provisions regardless of sex will eliminate bias upholding *Article 14*¹⁹ i.e., equality before law. India has taken a few steps towards gender neutrality, but there are a few areas which need addressing. The law providing for protection against rape mustn't be circumlocutory but adding "or anus or mouth of a man", might bring in justice to the victims. Putting the rape laws under an umbrella will bring the status of male victims and also transgender communities.

K T S Tulsi's plea should be taken into reconsideration. The plight of male rape victims is no less than female ones. By taking this issue into a thought, many men can seek justice and making people aware of this will bring down the stigma and thus help the country grow. The notion of men and transgender being the victim of rape must be seen as an atrocity and not as a thing to be ashamed of. The need to end the entitlement of a person's body, be it a woman, a man or a transgender, has come. End of rape culture must come.

¹⁹ Article 14, Constitution of India.