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MALE RAPE: QUESTION REMAINS UNANSWERED IN INDIA

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ABSTRACT

The perception of rape as a crime solely against the women has deeply influenced the societal attitude and legal framework often made male victimization invisible. The Bhartiya Nyay Sanhita 2023, which continues to define the sexual offence in gendered specific manner, recognizing women and excluding men which remain under researched and inadequately addressed within Indian context.

These legal exclusion creates systematic barriers for male survivors particularly groups such as male students subjected to male to male and female to male abuse. The analysis shows societal stigma, rigid notion of masculinity and the institutional discourage reporting and restrict the access to justice.._By identifying the gaps in legal provision and social awareness, emphasises the urgent need for gender neutral sexual offence legal reform. Addressing the male victimization is not essential only for ensuring inclusivity but also for strengthening the foundational principles of equality, dignity and justice within the criminal justice system.

KEYWORDS

Sexual victimization, Male victimization, Rape, Sexual offence, Sexual assault, Human dignity and equality

INTRODUCTION

“A sexual act that is conducted and attempted against a person’s will and free consent is called sexual victimization “. victimization has direct negative influence on the mental and physical health of those who experience it which might lead to short or long term impacts such as physical injury, mental stress, anxiety, low self-esteem and suicidal thoughts or ideation. As per estimates over 27% male and 32% women had been sexually victimized at some time in their lives. Yet males have seen less affected by the sexual victimisation but there are several evidences that show that male sexual abuse victims

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might have been mentally affected same as those of female victims and some times it may even more worsen the situations.²

In December 2012, a 23 year old physiotherapy student who has been dubbed as ‘nirbhaya’ because Indian law prohibits rape victims from being identified. On 23 December 2012 after the case, a committee headed by justice Verma was constituted to recommend amendments to criminal law to provide for quick trials and punishment and to provide speedy justice to the victims. The committee consisted of 3 members headed by Former chief justice of Supreme court Justice J.S. Verma and other members of the committee were justice Leila Seth, former judge of the high court and Gopal Subhramaniam, former solicitor general of India.³

The criminal law amendment act was passed by the legislative assembly by the assent of the President of India on 2nd April 2013 but it had been deemed to have come into force retrospectively from 3rd February 2013. This amendment act brought up a light of hope among the citizens of India since it has major amendments for the growing concern over crimes against women and particularly after the Nirbhaya case of 2012. It included several offences and new provisions related to acid attacks, sexual harassment, voyeurism, stalking and human trafficking.⁴

In this male dominant society in a country like India. Men are considered the strongest of all and they are not supposed to do the things which are against their manliness and they are not considered as vulnerable in society and only women are raped in society. The general stereotype about men in society is that they always want sex and the sexual activity between two males is always for their own enjoyment and it is done voluntarily. Notion among the society is that the men are less likely to be affected by any kind of abuse and they are less likely to be traumatized. Masculinity made males the silent victim of rape and sexual assault.⁵

² (Male Victims of Sexual Assault: A Review of the Literature, 2023)
<https://pmc.ncbi.nlm.nih.gov/articles/PMC10135558/>

³ (RETHINKING RAPE: SHOULD THE LAW STILL CONFINE TO THE PARADIGM?, 2013)(Times Of India, 2019) (JOTHI & JS, 2013)<https://timesofindia.indiatimes.com/india/how-nirbhaya-case-changed-rape-laws-in-india/articleshow/72868366.cmshttps://nlujlawreview.in/wp-content/uploads/2023/04/Volume-2-Issue-1.pdf>

⁴ (Drishti Judiciary, 2025) (Times Of India, 2019)<https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/the-criminal-law-amendment-act-2013> (JOTHI & JS, 2013)<https://nlujlawreview.in/wp-content/uploads/2023/04/Volume-2-Issue-1.pdf>

⁵ (INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, 2020)<https://ijlmh.com/wp-content/uploads/The-Silent-Male-Rape-Victims-in-India.pdf>

In 2023 India redefined its criminal law i.e. Indian penal code 1860 and introduced Bhartiya Nyaya Sanhita 2023, which was enforced in July 2024 yet this law considered rape survivors as women and man as accuse of committing rape as well defined in section section 63 of BNS 2023.⁶

On 14th of June 2024, a 23 year old man committed suicide hours after the he was gang raped by four men in a hotel of Gorakhpur district of Uttar Pradesh. Police lodged a FIR under section 377 of Indian Penal code 1860 against four accused and after the implementation of Bhartiya Nyaya Sanhita 2023, does not include the section 377 or its equivalent code which deals with rape against males and transgenders.⁷

INTERNATIONAL LAW AND STATISTICS ON THE OFFENCE

1. South Africa -: As per the research population based in South Africa using sample of adult male that revealed that 9.6% of men reported as the victims of men on men sexual violence and 3.0% of them represented the rape perpetration and 3.3% had been raped by another males ; 1.2% of them were rape perpetrator of male-on-male rape. Sexual offences are covered by Criminal law (sexual offences and related matter) amendment act 2007 which is gender neutral in nature and it protects anyone who is the victim of sexual violation or exploitation and punishment ranging from minimum sentence of 15 years to life imprisonment.⁸
2. Kenya -:To address the issue of rape and sexual assault in the Kenya, Government introduced a comprehensive law reform naming Sexual offences act 2006. Purpose of this act is to include

⁶ (THE BHARATIYA NYAYA SANHITA, 2023 NO. 45 OF 2023 An Act to Consolidate and Amend the Provisions Relating to Offences and for Mat, n.d.)
Section 63 of BNS 2023

⁷ (Bharatiya Nyaya Sanhita Has No Section Dealing With Rape of Men, Transgender Persons, 2024)
Section 377 Of Indian Penal Code 1860

⁸ (JOTHI & JS, 2013) https://www.nlujodhpur.ac.in/downloads/lawreview/Final_Rethinking%20Rape.pdf
(RETHINKING RAPE: SHOULD THE LAW STILL CONFINE TO THE PARADIGM?, 2013) (Prevalence of Consensual Male–Male Sex and Sexual Violence, and Associations With HIV in South Africa: A Population-Based Cross-Sectional Study, 2013)<https://pmc.ncbi.nlm.nih.gov/articles/PMC3708702/>
<https://www.gov.za/faq/justice-and-crime-prevention/what-are-sexual-offence-crimes#:~:text=Sexual%20offence%20crimes%20are%20serious,victim%20of%20a%20sexual%20offence>

the crime of rape which also include Pedophile, male on male rape, etc. Such legislative framework amendments are brought by the government to move forward to be more inclusive and gender neutral. The minimum sentence is 10 years to life imprisonment as per the 2006 amendment.⁹

3. United Kingdom -: The Report released by the Ministry of justice in the UK revealed that 4,73,000 adults were victims of sexual offence on an average per year out of which around 72,000 were males . The study also reported that these victims were subject to sexual assault before the age of 16. The report indicated that between the year 2005-2011 there were a total of 1141 cases per year as per the record of police¹⁰. The law in the country to prohibit such offences include sexual offences act 2003 of United Kingdom.

4. United States Of America -:

The situation in the USA is not better than the other countries of the world as per the statistics 2.78 million males in the country are the victims of rape or sexual assault. In the year 2009 approximately 25,000 males were the victim of sexual abuse. A rate of 4% of homosexuals experienced forced sex within their intimate relationship was reported in the USA in the study undertaken by MSM in the USA.¹¹

The law in the country to prosecute the rape and sexual abuse of male victims is gender neutral sexual assault laws at both federal and state level. These law covers all forms of sexual assault such as rape, penetration or oral sex and penalises up-to life imprisonment as gender neutral law for the victims . Federal law in the country includes the 10 U.S code § 920.

QUESTIONS TO ANSWER

- How are males victimized ?
- Can female be accused of male rape?

⁹<https://www.svri.org/sites/default/files/attachments/2016-03-17/Legislation%20for%20sexual%20violence%20in%20Africa%20and%20considerations%20for%20preparing%20and%20delivering%20evidentiary%20requirements.pdf>

¹⁰ (RETHINKING RAPE: SHOULD THE LAW STILL CONFINE TO THE PARADIGM?, 2013) (JOTHI & JS, 2013) (Sexual Offences Act 2003, n.d.) (An Overview of Sexual Offending in England and Wales, 2013)

¹¹ (JOTHI & JS, 2013)https://www.nlujodhpur.ac.in/downloads/lawreview/Final_Rethinking%20Rape.pdf (RETHINKING RAPE: SHOULD THE LAW STILL CONFINE TO THE PARADIGM?, 2013)

- Can male rape or sexual offence against male can be considered as same as the sexual assault on females?
- Comparison of Indian law with International law

SEXUAL OFFENCE LAWS AND RECOMMENDATIONS MADE IN INDIA

The section 63 of Bhartiya Nyaya Sanhita, 2023 (BNS) clearly accuses men and considers women as only the survivor and victim of the such severe crime that is rape. This categorises the act of rape is committed by man against woman. This law is silent about the rape committed against man and transgender in the society and it does not mention even a word about such act; since the society also refuses to see and answer such offences. After the BHARTIYA NYAY SANHITA 2023 came into force India no longer remains a gender neutral state and does not have any provisions resolving issues of rape against men and transgender and post enforcement of this act these rapes became a non offense able act.

Hence it can be clearly seen that there is no law in India which particularly deals with the rape or sexual assault against male by male or by female on male. Earlier there was section 377 in the Indian Penal code 1860 that deals with sexual acts against the nature but after the introduction of new criminal law there is no particular law which deals with these kinds of offences. These types of laws violate article 21, article 14 and the principle of equality mentioned in the Preamble of the Constitution of India which guarantees the right to life and dignity, equality before law and equal protection of law within the territory of India.¹²

POCSO 2012

Although the POCSO (Protection of child from sexual offences) 2012 has provisions for the sexual offences against the child which is irrespective of gender in which both male and female child are included but we don't have such provisions which are gender neutral in nature for adult male.

¹² Article 14 Of Constitution of India 1950
Article 21 of Constitution of India 1950
Section 375 Of Indian Penal code 1860

RECOMMENDATIONS

In a writ petition no. 33 of 1997 filed by petitioner Sakshi Organisation in the Supreme Court of India for the issue concerning the women and the definition of expression 'sexual intercourse' mentioned in section 375 of IPC 1860. The Supreme Court in its order dated 13th January 1998 directed the law commission to indicate its response in the issue raised. The 172th law commission report of India 2000 headed by Justice B.P. Jeevan Reddy in which he recommended the substitution of definition of 'rape' by definition of 'sexual assault'. Not only women or girls but young males are increasingly subjected to forced sexual assault causes same mental trauma and psychological damage to a boy than to girl and boys are also subjected to oral sexual intercourse. As per the report, according to Ms. Sheela Barse, both boys and Girls are regularly used for all kind of sexual acts for certain tourist centers such as Goa mainly for foreign tourists. She emphasised to recommend for the widening the scope of offence under section 375 of IPC 1860 and to make it gender neutral.¹³

The Justice Verma Committee Report headed by Justice Jagdish Saran Verma recommended that "The manner in which the rights of women can be recognised can only be manifested when they have full access to justice and when the rule of law can be upheld in their favour. The proposed Criminal Law Amendment Act, 2012, should be modified as suggested, and to secure public confidence, be promulgated forthwith. Since the possibility of sexual assault on men, as well as homosexual, transgender and trans-sexual rape, is a reality the provisions have to be cognizant of the same", but the same recommendation was rejected because this report was considered as a women centric report only.¹⁴

In 2013 the Center Passes a Criminal amendment act in which under the recommendation of justice verma committee which replaced the term rape to make the offence a gender neutral offence however they have to reverse the changes made because of huge criticism from the feminist and women group as they consider the amendment as the the attack on feminism for making the law gender neutral and consider rape as a male crime.¹⁵

¹³ (172 Law Commission Report, n.d.)<https://archive.pib.gov.in/archive/releases98/lyr2002/rjan2002/04012002/r040120023.html>

¹⁴ (Justice Verma Committee Report, 2012) (RETHINKING RAPE: SHOULD THE LAW STILL CONFINE TO THE PARADIGM?, 2013)<https://spuwac.in/pdf/jsvermacommittereport.pdf>

¹⁵ (CRIMINAL AMENDMENT ACT 2013, 2022)https://blog.ipleaders.in/criminal-law-amendment-act-2013/#Criticisms_of_the_Amendment

Later in 2017, a PIL was filed at Delhi High Court by advocate Sanjiv Kumar, which challenge the constitutional validity of rape provisions under the IPC i.e. section 375 and section 376 of IPC, since the law pertaining to rape cases are biased towards the men. In that petition he stated: “Gender neutrality is the simple reorganization of reality. Men sometimes fall victim to the same or at least very similar acts of those suffered by women Male rape is far to be prevalent to be termed as an anomaly or a freak incident. By not having gender – neutral laws, we are dying a lot more justice than is commonly thought.”¹⁶

WAY FORWARD

The way forward lies in adopting a gender neutral consent based framework for sexual offence in India. The definition of rape must be expanded as recommended by the Justice Reddy committee and Justice Verma Committee with the broader offence sexual assault so that it is applicable to all genders. Legislature must put forward some reform accompanied by sensitization of police, judiciary and doctor professionals to break up the stereotype in the society that discourages the male victim reporting. Data collection, victim support mechanism and counselling services must be made inclusive. The acknowledging and adoption of male rape does not dilute the seriousness of crime against females but rather it will strengthen the constitutional and moral foundation of the constitution of criminal law and aligning it with the human rights, fairness and reality. It ensures that no survivor is left without remedy and merely because of their gender.

CONCLUSION

The silence surrounding the male victimization in India is not merely a society failure but also a constitutional one. The repeal of section 377 of IPC and enactment of BNS 2023 has created a regulatory gap and made it difficult to attain justice. The Suicide of 23 year old rape survivor in Gorakhpur is a painful reminder of human cost and legislation silence.

The 172nd law commission report, Justice Verma Committee recommendations and comparative framework from different countries law such as United Kingdom, United States of America, Kenya and South Africa towards an inclusive, gender neutral understanding sexual assault. With the political

¹⁶ (Delhi High Court Issues Notice to Centre on PIL Seeking ‘Gender-Neutral’ Rape Laws, 2017) <https://www.india.com/news/india/delhi-high-court-issues-notice-to-centre-on-pil-seeking-gender-neutral-rape-laws-2502155/>

will even the Indian Legislature is capable of gender neutral protection as demonstrated by POCSO 2012. The argument that gender neutral rape law can dilute the woman rights is logically unsound but constitutionally it cannot be defended as the equality before the law under article 14 and right to life and dignity under article 21 extends to each and every individual without any exception. Recognizing male rape is not an act against the feminism, it is an act of justice. The system that leaves no survivor without the remedy based solely on their gender. Criminal laws reform must be anchored not in politics of gender but in universal principles of human dignity and rule of law.