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# Legal Discrimination Faced by Male Sexual Assault and Rape Victims in India: A Critical Study

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## ABSTRACT

*Male sex workers in India go through some of the worst abuse, sexual or otherwise. Still, because of their non-negligible representation in the socio-legal sphere, the woes faced by this minority group get promptly ignored while having little to no legal recourse available to them. One of the main contributing factors to rendering them invisible compared to their female counterparts is due to the difficulty society faces in placing them side by side with the narrative consisting of a stereotypical image of a sexual victim who needs to be saved, rescued, and rehabilitated from a life of 'prostitution'. Males, being the biologically more potent sex, better suits the ideal image of an offender than the offended. The rape laws of India, being penetration-based, perpetuate the same wrongful idea that males cannot be sexually forced unless they have some form of will themselves. This perspective disregards the various frames of reference that can be at play while missing out on the central component that defines rape: lack of consent. One of the main reasons this perspective is so prevalent in India is the lack of discussion and discourse around female criminality. The leading portrayal of females as the frightened, gentle, and worried preservers of social norms stop the public from considering females as possible perpetrators of violent crime who are willing to engage in criminal acts that are almost entirely male-dominated. This paper will attempt to critically study the present statutes and legislations regulating prostitution and rape in India to understand how the lack of acknowledgement of female criminality is putting male sex workers at risk and re-emphasize the need for gender-neutral rape laws in India.*

**Keywords:** male, sex work, India, sexual abuse, rape laws, gender.

## I. INTRODUCTION

In its general and accepted sense, rape is a crime committed by men against women. It has been described as the manifestation of a patriarchal society that supports rape: the sexual victimization of women by male preps. The belief that men cannot be raped kept these rape survivors out of the study spotlight, even though many rapes and other sexual assault victims

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are male. Male rape is considered taboo and is associated negatively with heterosexual men in society. As a result, most victims were reluctant to report sexual assault<sup>2</sup>. Men typically worry that if they talk about the incident, society will judge them based on their sexual orientation and brand them as homosexuals or unmanly. This apprehension drove many male victims to hide and deny their abuse, which led to several unregistered rape cases. Long-standing stereotypes about men in society mainly influenced this phenomenon<sup>3</sup>.

The biology-based argument that the male "victim" undergoing an orgasm can be regarded as partially consensual as it suggests that the male "victim" experiencing an erection and ejaculation would imply his pleasure is another primary contention reflected in the rape laws of India. Most sex offenders employ the technique of persuading the victim to ejaculate; the victim may be confused by his physical response and choose not to report the act out of concern that his sexual identity may be questioned. However, this reasoning has a severe built-in weakness, which will be further dealt with in depth<sup>4</sup>.

There is a gap between who the law thinks a sexual perpetrator is and the actual realistic sexual perpetrator of the world, where the latter is much more inclusive. This gender bias is currently working in the prevalent legislation, which has refused to consider the intricate and complex nature of sexual offences while having a biased view of women and their criminal capabilities. The paper aims to critically analyze the present rape laws in India and their inherent biases to establish the need for gender-neutral laws regarding rape and other sexual offences.

### **(A) Scope and Limitation**

The scope of this study is restricted to Indian statutes and legislative frameworks that deal with rape and other sexual offences while also analyzing the judicial precedent of the Supreme Court that has contributed to the interpretation of these statutes.

There are two significant limitations of this study. The first one is the vague legal status of sex work in India, where this profession faces a lot of judicial and social discrimination and puts the life of sex workers, including men, women, and transgender people, at risk. The second limitation is the lack of official data bringing the status of male rape victims to light. This lack of empirical data hinders brilliant analytical studies from being undertaken, which ultimately would have successfully called the attention of the general public and government to the reality of male victims.

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<sup>2</sup> JH Bogart, *Reconsidering Rape: Rethinking the Conceptual Foundations of Rape Law*, 8 C. J. L. J 159, 173-11 (1995).

<sup>3</sup> Jai Vipra, *A Case for Gender-Neutral Rape Laws In India*, 286 C. C. S Working Paper 1, 3-4 (2013).

<sup>4</sup> P Rumney, *Gender Neutrality, Rape and Trial Talk*, 21 I.J.S.L. 139, 150-5 (2008).

## II. AN OVERVIEW OF PRESENT LAWS ON RAPE IN INDIA

Under the Justice Verma Committee's findings, released following the national uproar over the Nirbhaya case, the Criminal Law Amendment Act of 2013 was enacted in February 2013. The definition of rape laws was changed significantly by the act. Section 375 of the IPC was amended, and its scope was expanded to include any physical penetration as rape. Additionally, a clarification was added to the section that defined *consent* as "an unequivocal voluntary agreement when the woman communicates her willingness to participate in the specific sexual act by words, gestures, or any other form of verbal or nonverbal communication."<sup>5</sup> The age of consent was also raised from 16 to 18.

The definition of rape perpetrated by an armed forces member was added to section 376(2). The 376A was included so that the perpetrator would face harsh punishment if the victim's rape resulted in death or a prolonged vegetative state. The addition of Section 376B makes it illegal for a husband to have sexual relations with his wife while they are separated. The criminal offence of engaging in sexual activity with a person in authority, such as a fiduciary relationship, a public employee, or the manager of a prison or hospital, was addressed in Section 376C. The crime of gang rape was covered by a new section 376D. Under Section 376E, the case of repeat offenders was covered. The terms of imprisonment and fines to be paid are mentioned<sup>6</sup>.

Despite the benefits of the amendment, it was criticized for leaving out other Justice Verma Committee recommendations, such as making rape and sexual assault laws gender-neutral, prohibiting politicians accused of sexual offences from running for office and adding marital rape to the ambit of crime.

## III. HURDLES IN GENDER SENSITIZING THE LAW

In the case of *State of Punjab v. Ramdev Singh*, the Supreme Court observed: "Rape is not only an offence against the person of a woman rather a crime against the entire society. It is a crime against basic human rights and violates the most cherished fundamental right guaranteed under Article 21 of the Constitution of India."<sup>7</sup> However, the country still needs to recognize the essence of this judgment. The hurdles to such recognition are discussed below:

### Patriarchy

Oxford English Dictionary defines *patriarchy* as "a society, system, or country ruled or controlled by men." In essence, the Indian community is patriarchal, with men expected to act

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<sup>5</sup> The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India), § 375.

<sup>6</sup> *Ibid.*

<sup>7</sup> *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, 424.

in a set manner. Any deviation from this norm is met with derision from Indian society at large. One such stereotype that patriarchal culture has against males is that they should always be interested in having sex, which disproves the idea that a man can give his permission for a sexual act<sup>8</sup>.

The idea that males lack sexual liberty is born from the assumption that they will always be able to get an erection whenever and with anybody. Since the norm of declining sex would make them appear less male or queer in the eyes of society, men typically feel driven to have intercourse. In the twenty-first century, it is common for women to perform more traditionally masculine jobs. However, it is still considered improper for a male to display a feminine side<sup>9</sup>.

Men are discouraged from reporting sexual attacks against them due to society's patriarchal worldview. Hence there is no conclusive evidence that men are sexual assault victims. Men respond to sexual assault differently than women, according to persistent assertions. Contrary to popular belief, a 1989 study conducted in America found that men react similarly to women in cases of sexual assault. However, men found it challenging to disclose these instances due to the stigma that sexual assaults are primarily a woman's issue or due to the dread of being accused as frail or less of a man<sup>10</sup>.

### **Misinterpretation of physiological factors**

It would be safe to draw three conclusions regarding sexual assaults without getting bogged down in data and numbers.

- Firstly, rapes are exceedingly committed by men, even though women commit a sizeable proportion of sexual offences.
- Secondly, just because women statistically suffer a considerably higher risk of sexual assault than males do not lessen men's danger.
- Thirdly, a common misconception is that male sexual assault is not a serious issue because there are not many cases documented, which paradoxically is due to the absence of regulations requiring reporting such cases<sup>11</sup>.

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<sup>8</sup> Charlene Muehlenhard & Stephen Cook, *Men's Self-Reports of Unwanted Sexual Activity*, 24.J.S.R. 58, 55- 24 (1988).

<sup>9</sup> Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?* 62 S.J.S.J. 743, 750-3 (2022).

<sup>10</sup> Gillian Mezey & Michael B. King, *The Effects of Sexual Assault on Men: A Survey of 22 Victims*, 19 Physiological Medicine 205 (1989).

<sup>11</sup> Roy Levin & Willy Burlo, *Sexual Arousal Aand Orgasm In Subjects Who Experience Forced Or Non-Consensual Sexual Stimulation – A Review*, 11 J.C.F.S. 82, 84-11 (2004).

The claim that the victim had an erected penis and/or ejaculated, which suggests that the victim gave his consent, is frequently used as evidence against men in sexual assault prosecutions. Scientific tests have demonstrated that during a sexual assault, the nervous system activates the fight-or-flight reflex and generates adrenaline, causing a blood flow increase and lubricant to the genital regions. Most of these men also experience confusion or remorse since they erupted or ejaculated during the assault. The study thus made the compelling argument that men indeed have unwanted erections during sexual attacks<sup>12</sup>. The existence of orgasm during the sexual assault will not be conclusive evidence of consent, as determined by American courts<sup>13</sup>.

Understanding the connection between bodily arousal and sexual pleasure is essential. Men are led to believe that their penis is their primary sexual organ starting in adolescence and that an erection is a sign of permission. The fact that a man may have an aroused penis does not necessarily mean that he is consenting, as it could be the consequence of familiarity with a sexual act like penetration or other behaviors related to sexual assault. Physical and biochemical reactions do not represent a person's emotional state<sup>14</sup>.

### **Gender stereotyping by the media**

Media significantly influences how individuals think in the modern world. Men are not depicted as sexual assault victims in the mainstream Indian media, which also presents an unrealistic image of the ideal male. The Indian media makes light of the homophobic and transphobic stereotypes and harassment of men and homosexual and transgender people<sup>15</sup>.

Therefore, it is vital for Indian society to accept people of various genders and to confront directors and filmmakers about how they portray different genders and use serious subjects in lighthearted ways<sup>16</sup>.

### **Victimhood**

The situation of male dominance and crimes against women have changed over time. At this point, such laws are failing to protect those of the other sexes against whom false accusations are being levelled because they recognize women as the victims while ignoring the possibility that men may also be the victims, violating Article 14's principle of equal protection for all people<sup>17</sup>.

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<sup>12</sup> Philip Sarrel & William Masters, *Sexual Molestation of Men by Women*, 11 A.S.B. 117, 120-2 (1982).

<sup>13</sup> Curtis v. State, 223 SE 2d 721 (1976).

<sup>14</sup> Siegmund Fred Fuchs, *Male Sexual Assault: Issues of Arousal and Consent*, 51 C.S.L.R. 93, 103-1 (2004).

<sup>15</sup> Uma Chakravarti, *Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class, and State*, 28 E.P.W. 579, 585-14 (1993).

<sup>16</sup> Claire Cohen, *Male Rape is a Feminist Issue: Feminism, Governmentality and Male Rape*, (2014).

<sup>17</sup> *Idib* at 14.

It has been suggested that there are several myths about male Rape in the literature. Turchik and Edwards (2012)<sup>18</sup> summarize these as follows: Men cannot be raped; "real" men can defend themselves against rape; only gay men are rape victims and/or perpetrators; men are not as affected by rape; a woman cannot sexually assault a man; male rape only occurs in prisons; sexual assault by a person of the same sex causes homosexuality; homosexual and bisexual people deserve to be sexually assaulted because they are immoral and vulgar<sup>19</sup>.

Sexual assaults that do not fit the male-on-female stereotype are significantly more common than one may think in India. In 2007, the Indian government conducted research on child sexual abuse and discovered that of the children who reported experiencing sexual abuse, including rape or sodomy, 57.3% were males, and 42.7% were girls. According to a Delhi-based Centre for Civil Society survey, almost 18% of Indian adult men reported being persuaded or forced to have sex. Of those, 2% were male perpetrators, and 16% were female<sup>20</sup>.

Laxmi Murthy, a feminist scholar, acknowledges that "women are also capable of perpetrating sexual assault on men" and that "men too can be sexually assaulted- by men as well as by women (in rare cases)"<sup>21</sup>. Nevertheless, even though Indian society may not be ready, legislators need to amend laws to reflect the changing situation and give equal attention to the sexual assaults experienced by men.

### **Sexual Offences and the Transgenders**

Transgender people are subject to crimes such as rape and sexual assault in addition to men. Under Chapter 8 Section 18(d)<sup>22</sup> of the Transgender Persons (Protection of Rights) Act of 2019, violators are subject to a sentence of imprisonment of between six months and two years and a fine. Such demonstrates the glaring discrimination against transgender people because, for a cis-gendered woman, a similar offence would result in life imprisonment<sup>23</sup>.

## **IV. CONCLUSION**

Reframing all current laws in a sexually neutral language is the first move towards recognizing sexual assault against persons of all genders and reaffirming the idea that sex should have never

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<sup>18</sup> Turchik, et al., *Myths about Male Rape: A Literature Review*, 13 P.M.M 211, 220-1 (2012).

<sup>19</sup> ANDERSON et al., *ACCOUNTING FOR RAPE PSYCHOLOGY, FEMINISM AND DISCOURSE ANALYSIS IN THE STUDY OF SEXUAL VIOLENCE*, 150-166 (1st ed. 2008).

<sup>20</sup> Shivam Sharma & Aneisha Kaushik, *Protection of Men Against Sexual Harassment- Need of the Hour*, 13 S.A. 271, 277-1 (2019).

<sup>21</sup> Partners for Law in Development, *Comments by Laxmi Murthy to Criminal Law Amendment Bill 2000* at 3 (2013).

<sup>22</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 169, Acts of Parliament, 2019(India), § 18(d).

<sup>23</sup> MINISTRY OF JUSTICE, HOME OFFICE & THE OFFICE FOR NATIONAL STATISTICS, *AN OVERVIEW OF SEXUAL OFFENDING IN ENGLAND AND WALES, 2012-13*, HC 10-I, at 55 (UK).

been the foundation for assessing legal wrongs. To make the entire legal system gender-neutral, the lawful means for investigative authorities must be debated and revised in depth. In essence, the law is nothing more than people's collective desire. Diversity and inclusiveness must be ingrained in ideas as well as in daily life in order to establish an inclusive society. Because ultimately, passing laws and training police officers will merely prove to be a few failed steps of the government's attempt towards reviving the institutional regime unless people's collective will reflect the same, for people are the root of real change.

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