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Male Sexual Abuse And Laws Relating To It

ABSTRACT

The recent statistics of National Sexual Violence resource centre states that **one in five women and one in seventy-one men will be raped at some point in their lives**. But why is it so that only female rape cases are taken into consideration in India? Rape itself is a very heinous crime irrespective of a particular gender. If we talk about Indian Laws, there are none, it's only Section 377 which was taken from **The Buggery Act of 1533 during British Rule** in India, which talked about **Sodomy** which the Supreme Court has struck down in the recent judgment of "Navtej Singh Johar & Ors. V. Union of India" but the non-consensual sodomy can create traumatically situation in a male mind. As the victims of buggery get petrified by such an act.

Rape against men is recognized in some countries like UK IN 1994 if a man had sex with another man without consent the crime is called **buggery** and the maximum penalty is 10 years of imprisonment. Indian Laws should recognize that men are raped too, as Section 375 of the Indian Penal Code does not create any room for males. Though child survivors of rape laws, under the Protection of Children from Sexual Offences Act 2012, is gender-neutral.

This paper will deal with sexual abuse of men in India, sexual abuse of men at workplace, sexual abuse of men in prison, sodomy law and also will impugn that myths regarding male rape are wrong in India.

This paper will compare the laws regarding the rape of men in other countries with the male rape laws in India.

The paper delineates means to eradicate this issue with suggestion of proper laws.



INTRODUCTION

In a world where people are so much concerned with their protection and safety. There is a huge part of the population which is being trapped in the web of rape offences and sexual offences. Rape is not just limited to one country, but it has spread its wings throughout the globe. It is not determined to only a neighbourhood or an age, but to gender also. The common concept in India regarding rape is that “a woman or a girl gets raped”, people have forgotten the view that men also get raped, they also get sexually harassed, etc.

During recent years, there has been an increase in the Rape Rate of Women in India. According to the National Crime Records Bureau, “one woman has reported rape in every 15 minutes on an average in India.¹ The annual crime report released by the Ministry of Home Affairs in 2018 had revealed that Women reported almost 34,000 rapes in 2018, barely changed from the year before. Just over 85 per cent led to charges, and 27 per cent to convictions.²

Now the question arises, that, What if a man gets raped in India? Even there are no statistical reports for the rapes of men or the males are were sexually abused. When a woman gets raped or abused sexually, there are laws to support her and to provide wings to the female victims. But what about the male victims?

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This is the stage when the world comes so far, still, there are limited laws on male rape victims, even this section draws very less attention of the world. A statistics have shown that one out of every ten rape victims is Male in the United States.³Rape is sexual violence which leaves out the long term consequences on the victims either it is a female or a male victim.

This paper throws light on the different rape laws for men victims in other countries in comparison with that of the laws governed in India. The objective of this paper is to find out the solutions for the male rape victims in India and how the country should look forward to making more laws for male rape victims of the country.

¹ <https://www.indiatoday.in/india/story/ncrb-2018-woman-reports-rape-every-15-minutes-in-india-1635924-32020-01-11>

² Ibid.

³ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Female Victims of Sexual Violence, 1994-2010 (2013)

MALE RAPE AND STATUTES IN VARIOUS COUNTRIES

The concept of male rape victims and that men can also be raped came into light after the 1980s, which focused generally the male children. A special research project in Victoria has shown that male rape victims don't receive the same level of support and counselling as females in the circumstances. One hundred and twenty survivors of rape took part, many of them told the researchers that serious sexual assaults go unreported because of the unavailability of accessible services for men.⁴ Men often avoid telling anyone because the courts and community still misunderstand the meaning of male rape.⁵ Statistics by New South Wales Bureau of Crime Statistics and Research, 2002, indicates that of all the victims of adult sexual assault that report to the police in New South Wales, 17% were men, while 50% of them were aged between 16 and 24 years.⁶

Generally, a male rapes another male and the victim of this assault has to keep silence in the society. The male-on-male rape is usually observed in the prisons and the military. In a case study by Amnesty International, which is a non-governmental organization and it focuses on Human Rights Globally, the Syrian Civil War male detainees gave their statements. A former detainee told Amnesty International that he was forced to watch as a male detainee was raped in front of him, one released detainee said that he shared a cell with a young man who had been forced to have a glass bottle with a broken top inserted into his anus, one said that his cellmate had been raped with a metal skewer, others spoke of a detainee with whom they had shared a cell who, while hanging in the shabeh position, had a cord attached to a large bag of water tied around his penis.⁷

Under chapter 17 of the Criminal Code of Russian Federation, the definition of rape has provided in a better sense. Article 131, Rape, that is sexual relations with the use of violence or with the threat of its use against a victim or other persons, or in taking advantage of the victim's helpless condition, shall be punishable by deprivation of liberty for a term of three to six years.⁸ The other

⁴Nicole Johnston, Male rape victims left to suffer in silence, The World Today Archive,(Friday, February 9 , 2001), <http://www.abc.net.au/worldtoday/stories/s244535.htm>

⁵ Ibid.

⁶ Margret Roberts, When a man is raped: A survival guide,(3 ed., NSW Health Education Centre Against Violence, 2013).

⁷ https://www.amnesty.nl/sites/default/files/public/2012_03_13_syria_-_torture_report_final_with_pictures.pdf

⁸ Criminal Code of Russian Federation art. 131, cl.1

forms of violent sexual actions, like, male-to-male, female-to-male, female-to-female and non-vaginal male-to-female, are punishable under Article 132. Same-sex violent sexual intercourse is also punishable under Article 134 of the Code.

According to Sexual Offences Act 2003, UK rape is when a person (X) commits an offence if he intentionally penetrates the vagina, anus or mouth of another person (Y) with his penis, without taking the consent from the person (Y).⁹



⁹ Sexual Offences Act 2003 UK sec.1 , cl. 1

MALE RAPE EVOLUTION THROUGH SODOMY

The concept of Male Rape evolved from the concept of sodomy and the usages of laws over the past years. In U.S. sodomy was earlier treated as a wide umbrella which covered the crimes which were against the nature. Sodomy law has been existing through hundreds of years and it originated in the religious interdictions which were against the Non-procreative Sexual Acts. Earlier in the Colonies, the laws which existed had made no variation between a woman and man sodomy, and the same-sex sodomy. Also, the customary punishment for sodomy was **death**.

In **Bowers V. Hardwick**¹⁰, the Supreme Court of U.S. upheld the sodomy law in Georgia. The law criminalized the anal sex as well as the oral sex, between male-male, female-female, and male-female, with the reasoning that homosexual people had no constitutional right in order to take part in sodomy. The sodomy laws validated the harassment and discrimination against the homosexual people. The homosexuals, under this, were branded as criminals.

Sodomy laws were used to justify discrimination within employment, family law decisions that refused to grant custody to gay parents, and adverse immigration decisions.¹¹ For example, in **Shahar V. Bowers**¹², a lady attorney who was to be employed in Georgia, was refused to employment in the office of State Attorney General, just because she was a homosexual (i.e. lesbian). The court in this case, held that there was no discrimination, in fact, the lady herself was supposed to be the criminal under the Sodomy laws of the State.

Concept of sodomy gave birth to male rape laws. With the increase in the wise use of the liberty provided by the state regarding the homosexual freedom of the people, there also arose the problems relating to it. The male children who were weak, used to be bullied by other boys, these bullying habits in bullies never decreased and they took the face of adult sexual assault of the same gender, that is, same-sex abuse. Abuses relating to men included any type of penetration of the anus or the mouth of the person or any kind of unusual sexual act towards that person, without his conscious consent. Sodomy laws were different from male sexual abuse, they

¹⁰ Bowers V. Hardwick, 478 U.S. 186, (1986).

¹¹ Ave Mince-Didier, Sodomy Laws, Criminal Defense Lawyer (Feb. 12,2020), <https://www.criminaldefenselawyer.com/resources/sodomy-laws.htm>

¹² Shahar V. Bowers, 114 F.3d 1097, (1997), <https://www.lexisnexis.com/community/casebrief/p/casebrief-shahar-v-bowers> .

restricted the homosexuality and infringed the Right to Liberty and Right to Privacy, but male sexual abuse relates to the crimes being committed against the sexual dignity of men.

LAWRENCE V. TEXAS ¹³

Sodomy Law practised in Texas was similar to that of other countries. The law only criminalized the sexual acts between the homosexuals. The United States Supreme Court struck down the law in Texas. The Fourteenth Amendment of the United States Constitution contains the Due Process Clause which guarantees the Right to Liberty and Privacy, which was being violated by the Sodomy Laws. The decision by the court revoked all the sodomy laws which restrained the consensual sexual acts between the adults.



¹³ Lawrence v. Texas, 539 U.S. 558, (2003), <https://www.lexisnexis.com/community/casebrief/p/casebrief-lawrence-v-texas> .

MALE RAPE STATUTES IN INDIA

In a patriarchal society like India, people are of the mentality that only women of the country can be assaulted sexually just because the country has been male-dominated since a very long time. But, the truth is that the term sexual assault is not limited to the women of the country only, but also some men are survivors of sexual abuse.

No one pays attention to the men who were being assaulted in childhood, the survivors of male rape and sexual abuse have always kept silence because of the uncooperative and judgmental society. An online research has resulted that 71% of the men have been abused sexually as children.¹⁴ Mahatma Gandhi once said, “the sexual assault of a child is gender-neutral. The boys who get assaulted as children, spend their whole life in silence.” There is a shame and disgrace is attached to them which prevents them from speaking out.

Male sexual assault is a serious problem which must now be addressed to India. All kinds of sexual violence against women have been recognized by the law in India. But there is no specific provision in the country which empowers the male survivors of rape and sexual assault. If we talk about child sexual abuse generally, the government found in 2007 that those children who reported experiencing rape or sodomy were 57.3% boys and 42.7% were girls¹⁵.

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The children, though, are being safeguarded by the law through The Protection of Children from Sexual Offences Act, 2012. The act, as whole talks about children below 16 years of age, somehow which includes the male children also.

The world recognizes domestic violence as violence which affects the life of a person in many ways like mentally, physically, psychologically, and emotionally, which is the violation of basic human rights. In India, the law only provides protection to the women from domestic violence through The Protection of Women from Domestic Violence Act, 2005, but there is no room for men who are assaulted and forced to have sex within the marital life.

¹⁴"The mindset is that boys are not raped": India ends silence on male sex abuse, The Guardian (Feb.15,2020), <https://www.theguardian.com/global-development/2018/may/23/indian-study-male-sexual-abuse-film-maker-insia-dariwala> .

¹⁵Dube, Dipa. "Outlining the Legal Landscape of Rape Laws in India." Woman and Child Rights: Issues & Challenges (Satyam Int. Pub. 2019) (2018)

Section 377 of the Indian Penal Code¹⁶

This law is the only law in India which stands against the Sexual Offences committed against Men also. It is the only law which has included men also within the count of the victims. The sexual abuse against men mainly consists of rape and assault, either anal or oral, which is generally done by other males either by penis or any other instrument. This kind of assault by men against a male comes under the same sex assault, which is definitely punishable under Section 377 of Indian Penal Code. These offences come under unnatural offences which are punishable under the law. The only way to bring any form of justice to male survivors was been stated under Section 377 of the Indian Penal Code, India's recently reinstated anti-sodomy law. Problematically, however, this law does not consider "sodomy" as actual rape and makes no difference between consent full and non-consent full sexual acts between two male adults.

Researchers say that the LGBT community faces a larger amount of sexual harassment with respect of male and female¹⁷. Even animals become a victim of sexual harassment.

Navtej Singh Johar & Ors. V. Union of India¹⁸

The Supreme Court of India, in 2018, decriminalized all the consensual sex between adult people in private, which includes gay sex too. The law earlier criminalized the consensual sex between adults of the same-sex, including oral and anal sex between opposite-sex adults. Though this law was declared unconstitutional, it still criminalizes sex with the minors, non-consensual sexual offences like rapes, and the bestiality.

The Constitution of India provides the Right of Equality through Article 14¹⁹, under which equality before the law is ensured which includes discrimination should not be on the basis of sex, then why there are numerous laws for women in India and not for the men of the country?

Deepika Bharadwaj²⁰ is an activist who stands up against the violence against men, she has been promoting the making of gender-neutral laws. Steps must be taken by the government for

¹⁶ Indian Penal Code 1860 § 377.

¹⁷ Avrind Narrain, The Articulation of Rights Around Sexuality and Health: Subaltern Queer Cultures in India in the Era of Hindutva, HEALTH & HUM. RTS., Vol. 7(2), 2004, at 142, 154.

¹⁸ Navtej Singh Johar & Ors. V. Union of India, AIR 2016 SC 76.

¹⁹ Constitution of India, art. 14.

the formation of ‘National Commission for Men’. The commission would look after the injustices, harassments, and grievances of men. The creation of a National helpline would provide support to men, where they would be able to seek help and report their problems. The gender-neutral campaigns should be started against sexual and physical violence and providing a safe environment to the victims of such assaults. Deepika Bhardwaj has started the petition for the National Commission for Men, to acknowledge the grievances by men and amendment of laws which violate the equal rights on the basis of sex under the Constitution of India.



²⁰ Deepika Bhardwaj: woman who fights for men’s rights, BBC News, <https://www.bbc.com/news/world-asia-india-38647822>.

IS INDIA READY FOR A GENDER-NEUTRAL LAW REGARDING RAPE?

Now, why India has not adopted a gender-neutral rape law? In order to understand this, there is need to understand the psychological aspect of male rape for instance if a goon forced two friends, of the opposite gender, to have sex with each other on gunpoint. Who according to you is getting raped in this scenario, almost 90% of the readers would say, a girl is being raped in this scenario but what about the boy? wasn't he raped too? This conflicting thought arrived because of the thinking that women being a victim and male being perpetrator²¹. This thinking came from ancient India as the historical events in India showed a clear rule of male chauvinism in the country.

In order to adopt such a law, this mentality needs to be destroyed.

The second thing which stops this law is the fact that any accusation must not only be drawn by emotions but should be backed up by testimonies in the court of law. Which would be very difficult to prove that a man was raped by women?

The third thing is ignorance as the law makers do not consider such a law important as there are a minimal amount of cases regarding male rape and also the fact that lawmakers have many more issues to frame law upon.

The law must give equal importance to all the genders, irrespective of the dominance or the ratio of the affected ones. The law makers have to realize that men also get raped, they should go above the conservative approach of the country which believes only women are always victims and men are never victims. Despite sexual imbalances in nature, the state is very slow to recognize sexual rights²².

There is a need for such specific laws which justify the wrongs done to the males. At this point of time, there might be a male child or an adult is being harassed by someone who he always

²¹ ANTOINETTE BURTON, BURDENS OF HISTORY: BRITISH FEMINISTS, INDIAN WOMEN, AND IMPERIAL CULTURE, 1865-1915, at 17 (1994) (discussing British feminists' belief that Indian women were their "special imperial burden").

²² The issue of age of consent and conjugal rights of a man over his wife were especially pronounced in the Rakhmabai (also called Rukhmabai) case, which captured the attention of the English. See, e.g., Meera Kosambi, Gender Reform and Competing State Controls over Women: The Rakhmabai Case (1884-1888), in SOCIAL REFORM, SEXUALITY AND THE STATE 265, 265-289 (Patricia Uberoi ed., 1996) (discussing the Rakhmabai case in conjunction with gender reform in India); Nalini Rajan, Personal Laws and Public Memory, 40 EcON. & POL. WKLY. 2653, 2654-55 (2005) (discussing the struggle between British colonial rule and Hindu orthodoxy).

trusted or by some other adults who thinks its fun to infringe someone's dignity²³. Men are suppressed by the pressure of the society in these matters, they don't have the courage to stand up for themselves, so the law must acknowledge that the affected ones also get their voice to be heard and the culprit be punished. The Indian rape laws had never acknowledged men as the victims of such crimes.



²³Basu, Srimati. "Sexual property: staging rape and marriage in Indian law and feminist theory." *Feminist Studies* 37.1 (2011): 185-211.

CONCLUSION

To sum up, the researchers like to conclude that this paper is made to create awareness regarding the physical social and psychological aspect of male rape. With an increase in sexual harassment of male rape in prison and workplace, it seems that there is an urgent need of making rape a gender-neutral crime. As in after being raped, a male has no grounds to ask for a remedy. Though there are some limitations this paper emphasizes upon which could be easily removed by an intelligent lawmaking system.

The psychology itself can be changed by taking an initiative of making such law. By this paper, the researcher wants the government to decriminalize non-consensual sodomy as no one must be given enough freedom to touch another person without his/her permission.

The main advantage of this law will be a reduction of suicides, as according to survey suicide of men are more than that of women. Thus, any kind of sexual bifurcation regarding rape must be stopped. And India should also have sex-neutral approach regarding rape like in Russia. As rape is a crime against humanity and must be stopped with immediate effect.

Thus there must be proper learning done on the word ‘rape’ and no individual must be affected with the laws, may it be male, female, homosexual, bisexual, gays, lesbian.

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