

Necessity to Think Beyond Male on Female Paradigm

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Abstract—This paper presents the necessity to think beyond male on female paradigm.

Index Terms— male or female paradigm.

I. INTRODUCTION

“I was thrown face down onto the floor....He punched me twice in the head and said: “shut up queer -- you get what you deserve”.... [and then he raped me]....I wanted to die.”

Rape is an act of non-consensual sexual penetration. It doesn't matter if the victim was raped by force or only under duress, the crime will be considered as rape only. An individual may be charged with the crime of rape or other specific types of rape such as statutory rape, date rape, gang rape, ancestral rape, prison rape or marital rape. A person who commits the crime of rape (a rapist), can be either a male or a female and rape victim can also be a male or a female. Rape can include vaginal intercourse, anal intercourse, oral sex or penetration with any object or body part. Any degree of penetration is sufficient to constitute the crime of rape, ejaculation is not required. Consent is the most common defense to rape charges.

Rape is the stigma which exists in the society from very long time. It basically states about the violation of the women's body. When we come down to Indian perspective, rape is a cognizable offence in India and it has been defined under section 375 of the IPC and punishment for rape has been defined under section 376 of the IPC.

II. NEED FOR GENDER NEUTRAL RAPE LAWS

In India there is a need for gender neutral rape laws which is the prime concern of this paper, even in the definition of rape provided by IPC mentions “if the man is said....” So according to Indian courts of justice and Indian society the pre conceived notion is that man can't be raped or sexually harassed as both the sections of IPC that is 375 and 376 in their current form are gender specific and does not secure males, especially adults. As the boys below the age of 18 years are being protected by the law under the protection of children from sexual offences act [POCSO] but once they have reached the age of majority their rights have been snatched away.

Therefore the notion which is being pre conceived that men can't be raped is completely falsified as there is an almost

unanimous social standard that only women can get raped as men are strong hence they can protect themselves from male-assailants and can obviously not be raped by women. Male rape victims due to several social, psychological and emotional factor remains silent even when they suffer as same as female victims but because of lack of supporting institutions and acceptance in society they are being compelled to stay quiet. Activists often says mindset as the root cause of violence and discrimination against women, the same mindset which is the phenomenon of patriarchal society is responsible for the plight of male survivors.

Patriarchal thinking of our Indian society has also been contemplated in our legal system too as definition of rape defined in section 375 of the Indian penal code doesn't include male as rape victims and hence, there is no mechanism for justice for them per se.

From the statistics provided it has come to the light that about 10% of rape and sexual assault cases that took place the victims are men. Even after the criminal law amendment act 2013 law doesn't recognize such crimes against men, it only typecasts the men as the offender and the female as the victim.

The Justice verma committee which was propounded by Mr. honorable justice Jagdish Sharan Verma after the brutal gang rape took place with the 23 year old student in Delhi, in the recommendations given by this committee report it was being mentioned that laws pertaining to rape and sexual harassment should be gender neutral and not gender specific. The fact that women can and do rape men, haven't got any legal recognition in the society and there is a necessity of it being legally recognized. In the report given by this committee, dealing with Conclusions and Recommendations, the Committee has categorically stated that, “Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same.” Furthermore, it was also stated that unless the recommendations given by them were implemented urgently, it would result in the entire exercise being vain. The Committee has clearly acknowledged the existence and universality of male, homosexual, transgender and transsexual rape and the need for reforms in this area. However, the Parliament chose to ignore this suggestion and did not provide for the same in the Criminal Law (Amendment) Act, 2013.

Equality, mentioned in article 14 of the constitution being a

fundamental principle must ensure justice to all and gender specific rape laws are contradictory to article 14 of the constitution.

III. PUBLIC INTEREST LITIGATION

In the recent PIL filed in The High Court by social activist Sanjiv Kumar challenging the constitutionality of Sections 375 (rape) and 376 (punishment for rape) of the Indian Penal Code as they were not “gender-neutral”.

It Protects only females, as Mr. Kumar has sought to replace the IPC Section 375 and 375 with gender-neutral laws claiming the existing law pertaining to rape was gender specific and protects only the female which is other way biased and contradictory to article 14 of the constitution.

“Gender neutrality is a simple recognition of reality, as men sometimes fall victim to the same or at least very similar acts to those suffered by women,” the petition said adding that the 172nd report of the Law Commission of India had recommended that the rape law must be gender-neutral.

“Male rape is far too prevalent to be termed as an anomaly or a freak incident. By not having gender-neutral rape laws, we are denying a lot more men justice than is commonly thought.”

There has not been any legal course provided as, “It becomes very difficult to accept that there is a single reality in rape; that is, men rape women and men can never be victimized, or if they are, this act has a meaning so different for men that it cannot be labelled as rape per se,” the petition added, “recognition of male victimization does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts.”

The Supreme Court dismissed the PIL filed for gender neutrality of rape laws, addressing the points as, “These are affirmative provisions for the protection of women and in their favor. We cannot agree with your argument. This appears to us like an imaginative petition. Actually these are valid classification.”

The petitioner argued that there shouldn't be any discrimination between crime and criminals as "Crime has no gender and neither should our laws. Women commit crime for the same reasons that men do. The law does not and should not distinguish between criminals and every person who has committed an offence is liable to punishment under the Code,"

But the superior court of justice dismissed the PIL regarding amendment in rape laws in IPC instead of several valid arguments.

However, there must be equal protection to all from sexual assault also related to persons with disabilities, it has been come across several cases of men with disabilities facing sexual abuse, especially those in long-term residential care or in institutional care. Thus it is a "legislative necessity" to ensure protection from sexual assault to all citizens equally.

A. International Scenario

The Data collected by organizations such as the RAINN

(Rape, Abuse and Incest National Network) and also, several academic initiatives, which have been used to addition the submission which is being opposed to the general notion of unwanted sexual contact among males, irrespective of the sexual orientation of the victim, can cause lasting psychological trauma to the person.

The definition of sexual aggression as “behavior with the intention of making another person engage in sexual activity despite his or her unwillingness to do so”

1) South Africa

A population-based research using a sample of adult men in South Africa revealed that 9.6% of men reported male-on-male sexual violence victimization and 3.0% of them reported rape perpetration; 3.3% had been raped by another man, and 1.2% of them were perpetrators of male-on-male rape. It was also found that homosexual men were over nine times more likely to have been raped and are four times more likely to report the crime as opposed to heterosexual males.

2) United Kingdom

The Ministry of Justice, Home Office, and the Office for National Statistics of the United Kingdom recently revealed in its report that 0.4% of all males in England & Wales had been a victim of at least an attempted sexual offence.¹¹ This roughly rounds up to a figure of 72,000 males. These experiences of sexual abuse include the entire spectrum of sexual offences, ranging from rape and sexual assault to indecent exposure and unwanted touching. Among these, 12,000 related to offences such as rape or sexual assault by penetration. The study also analyzed the prevalence of subjection to sexual assault since the age of sixteen. This showed that 2.7% males had been a victim of at least an attempted sexual offence. Roughly 20% of these males were victims of rape or assault by penetration. The report further indicates that between the years of 2005-2011, there was an aggregate of 1141 cases per year recorded by the Police.

3) United States of America

The situation in the United States is no better. 2.78 million Males in the United States are victims of sexual assault or rape. In 2003, 1 out of every 33 men had experienced at least an attempted sexual abuse. Approximately 25,000 males in the United States were subjected to an aggravated form of sexual abuse or rape in the year 2009. A rate of 4% of homosexuals experiencing forced sex within their intimate relationships was reported by MSM in a study undertaken in the US.

B. Case Laws

In *People v. Yates*, the reason for the underreporting of male rape was discussed. It was said that “heterosexual male victims may feel that their sexual orientation is called into question and homosexual male victims fear that their sexual preference may be revealed.” As with most other sexual crimes, since there is a stigma attached to male same-sex rape, men rarely report the crime and are rarely involved in subsequent prosecution efforts.

However, this does not undermine the prevalence of male rape and its need to be recognized globally.

The claim that a male cannot be raped by a female was rejected by the Court of Appeals of New York in the case of *People v. Liberta*, wherein the Court rejected the argument in toto. It said that the claim was 'simply wrong'. In effect, the Court opined that even though forcible sexual assaults by females upon males are undoubtedly less common and vastly imbalanced with respect to forcible sexual assaults by males upon females, this numerical disparity cannot by itself make the gender discrimination justified. Women may well be responsible for a far lower number of all serious crimes than are men, but such disparity would not make it permissible for the state to punish only men who commit, for example, robbery. However, this decision rested on the assumption that as rape involved penetration, penetration (however slight) could be achieved without arousal. In other words, if there happened to be an erection, it was so decided that it would amount to consent on the part of the male and it wouldn't be considered as rape.

IV. CONCLUSION

Gender stereotypes play a pivotal role in molding the ideas of men and women in India. As this attitude can be uncovered as one of the reasons for the increasing incidents of rape of women, it can also be said to be the important reason why Indian society is so opposed to acknowledge the occurrences of male rape. The very notion of the masculinity and the strength of a man is threatened when he admits to having been raped. This serves as one of the major reasons most male rapes go unreported.

It must be understood that gender neutral laws would not necessarily work to the disadvantage of women and the loopholes, if it is suitably dealt with and adhered with adequate rules and regulations. Holding on to archaic laws in an attempt to avoid these changes would result in gross injustice to those who are currently beyond the purview of the laws.

Thus, it is of utmost necessity to amend the existing laws and insert the words 'person' in the place of 'man' and 'woman' in order to ensure justice to all which might lead to empower the glory of humanity as whole.

The most fiercely example of the plight of male rape survivors is that of the incident of Vinodhan, a young man from Chennai. In the media frenzy, that followed the brutal rape of the 23-year-old in Delhi, Vinodhan was moved to write about his traumatic gang rape incident at the age of 18.

Many male rape survivors like Vinodhan have silently suffered for many years with no recourse to the law and nowhere to turn to for psychological relief per se. Several other victims have also come out with their stories such as Krishnan, who was being raped in Kerala and was too ashamed to come out in the open. It is time these victims were given access to justice and a platform to vent their grievances, article 14 mandates at its best.

Constitutional Mandate:

This brings us to the issue of the right to equality mentioned in article 14 as envisaged under the Indian Constitution. Article 14 guarantees to every person, equality before the law and the equal protection of laws.

The expression 'equal protection under the laws' has now come to be read as an obligation on the state to bring about the necessary social changes, so that everyone may enjoy equal protection of the laws. This should be in consonance with the existing needs of society, and ensuring legal redress for instances of same-sex and male rape or sexual assault is the first step in bringing about social changes relevant to address.

Gender neutrality in sexual assault and rape law has long been an issue that legislators have been opposed to address. However, the pressing need for its acceptance in the law cannot be ignored further. The Justice Verma Committee's recommendations indicate the same. Therefore, eventually, it all comes down to a moralistic argument that every person deserves to have their rights being protected of all those persons subjected to the crimes of rape or sexual assault, irrespective of their gender. There should have been legal recourse in order to achieve their well-deserved justification.

Legal reform is needed as anti-male rape laws are violative of article 14 but that alone will not address this social and legal problem. It is important for society to collectively recognize the reality of sexual violence against men.

Thus, there is a necessity to think beyond the male on female paradigm. But only time will tell whether this will be achieved or not.

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