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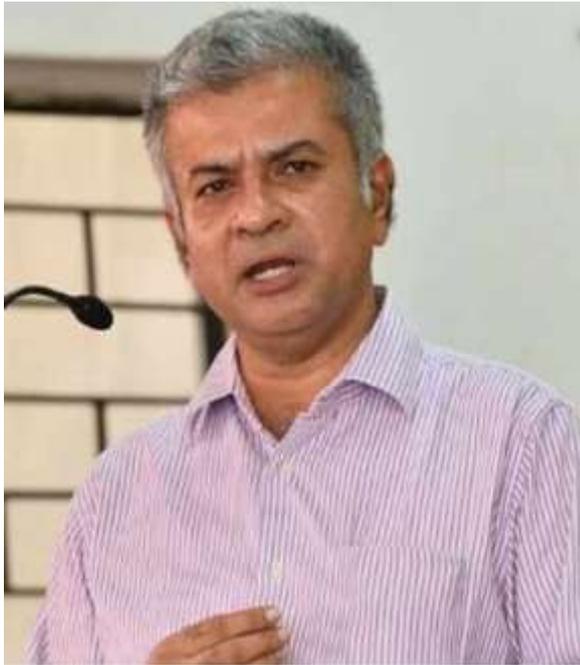
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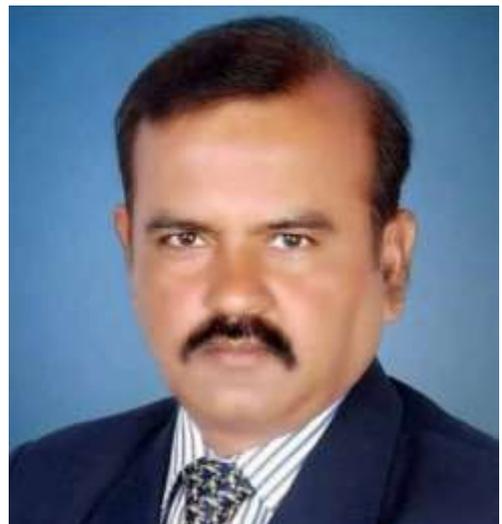


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MALE RAPE LEGISLATION: AN IN-DEPTH EVALUATION OF CRITICAL DIFFERENCES

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1.1. INTRODUCTION

Since the 1980s, sexual violence has been acknowledged as a significant societal issue, with a primary emphasis on the psychological and emotional distress endured by female victims and survivors. Feminist scholars view sexual violence perpetrated against women as a manifestation of male hegemony within a patriarchal social order that tolerates sexual assault. Numerous legal and support services have been established to mitigate the effects of sexual violence on women's lives. Fisher N. and Pina A. have asserted that the feminist movements have made noteworthy strides in enhancing the comprehension and awareness of rape within the academic realm and beyond.¹

The issue of male victims of sexual violence being disregarded during the drafting of legislation is a common occurrence. The phenomenon of male sexual victimisation is frequently subject to underreporting, with victims often exhibiting hesitancy to disclose their experiences due to concerns regarding potential retribution. Historically, the notion of adult males experiencing sexual victimisation was deemed implausible, if not exceedingly rare. The insufficiency of legal services and other remedial measures for male adults who have experienced sexual assault or rape is attributable to their lack of recognition. Since the mid-1990s, there has been a surge of scholarly inquiry into the incidence, intensity, and ramifications of male sexual victimisation, with novel methodologies for catering to male survivors being deemed indispensable.²

While sexual violence is more commonly perpetrated by men and experienced by women, prior research has not comprehensively addressed the intricacies of this matter as it has solely concentrated on male and female perpetrators and victims. The Indian society has made significant progress in the direction of attaining parity in terms of race and gender. The crime of "Rape of

¹ Sivakumaran, Sandesh. "Sexual violence against men in armed conflict." *European journal of international law* 18.2 (2007): 253-276.

² Russell, Wynne. "Sexual violence against men and boys." *Forced Migration Review* 27 (2007): 22-23.

adult male" is not recognised in the current legal framework, despite being punishable by the legal provisions of other developed countries. The legal options available to male victims of sexual assault are comparatively restricted in cases where the perpetrator is a female. The POCSO Act, 2012 (The Protection of Children from Sexual Offences Act 2012) provides protection to both male and female minors. However, the current Indian rape law only extends protection to female victims, leaving adult male victims of rape in a legal grey area.³

Based on the initial research, it has been determined that a minority of rape victims, ranging from 5 to 10 percent, are male. Additionally, a notable percentage of men in both American and British societies, ranging from 3 to 8 percent, have reported experiencing sexual assault during their adult lives. The prevalence of sexual assault among men may be underestimated due to their hesitancy to disclose such experiences. As per the 2010 Summary Report of the National Intimate Partner and Sexual Violence Survey (NIPSV), approximately 1.4% of the total American male population, or one in seventy-one men, have self-reported experiencing rape at some point in their lifetime. Merely 4.8% of male individuals who experienced sexual assault reported instances of being coerced into penetrating another individual.⁴

It is probable that the actual incidence of male victims of sexual violence surpasses the figures disclosed by the media. In accordance with a survey conducted by the National Institute of Sexual Violence in 2014, a proportion of 6.7% of males have reported experiencing instances of being coerced into penetrating another individual at some point in their lifetime. According to a survey conducted by the United Nations, a proportion of 3% of Chinese males reported experiencing sexual assault by another male at some point during their lifetime. This finding suggests that males comprised 14.4% of the total number of individuals who experienced rape. According to a recent survey conducted by the Centre of Civil Society in Delhi, around 18% of adult males in India reported experiencing sexual coercion. Among these respondents, 16% reported female perpetrators while 2% reported male perpetrators. Despite the significant implications of the issue, scholarly inquiry into male sexual assault has been predominantly disregarded, invalidated, or neglected. The following case studies from India serve as examples of the occurrence of male rape as a criminal act.⁵

³ Zalewski, Marysia, et al. "Introduction: sexual violence against men in global politics." *Sexual violence against men in Global Politics*. Routledge, 2018. 1-19.

⁴ Solangon, Sarah, and Preeti Patel. "Sexual violence against men in countries affected by armed conflict." *Conflict, Security & Development* 12.4 (2012): 417-442.

⁵ Sivakumaran, Sandesh. "Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict." *International Review of the Red Cross* 92.877 (2010): 259-277.

In June 2019, a 37-year-old individual, who held the position of manager at an advertising agency located in Andheri, India, disclosed that they were subjected to sexual assault by a 42-year-old male. The individual who assisted the man successfully evaded law enforcement and departed the nation. According to reports, the two individuals purportedly encountered the victim at a drinking establishment and extended an invitation to him to join them at their residence for additional alcoholic beverages prior to perpetrating the offence. According to the complainant's statement, the accused provided him with a cigarette, which resulted in his severe intoxication. Subsequently, the accused allegedly engaged in non-consensual sexual activity with the complainant. Subsequent to vacating the flat, the aggrieved party apprised his acquaintance of the incident and was advised to report the matter to the law enforcement authorities. The medical examination provided evidence of sexual assault perpetrated against the victim.⁶

Legal position of world on male rape

In 2012, the Federal Bureau of Investigation's Uniform Crime Report broadened the scope of rape to encompass instances of nonconsensual oral penetration by a sex organ or nonconsensual vaginal penetration with any body part or object. The act of rape is now recognised as a criminal offence that can be perpetrated by or against individuals of any gender, marking a significant departure from previous definitions. According to the laws of the United States, the severity and trauma associated with non-consensual penetration with an object is now equivalent to that of non-consensual penile penetration. Historically, the legal terminology for non-consensual sexual intercourse perpetrated against men in England was referred to as non-consensual buggery. This phenomenon, nonetheless, underwent a transformation due to modifications in the English legal system throughout history.⁷

The Public Safety and Criminal Justice Act is a legislative measure that pertains to matters of public safety and criminal justice. In 1994, the initial legislation was enacted to provide explicit protection for male individuals who have been subjected to rape. Section 142 of the law acknowledges male rape victims and criminalises the act of a man raping either a woman or another man. Furthermore, the Sexual Offences Act of 2003 categorises any instance where a male individual intentionally penetrates another individual's vagina, anus, or mouth with their penis as an act of rape. Moreover, the Sexual Offences (Scotland) Act 2009 and the Sexual Offences

⁶ Lewis, Dustin A. "Unrecognized victims: Sexual violence against men in conflict settings under international law." *Wis. Int'l LJ* 27 (2009): 1.

⁷ Dolan, Chris. "Into the mainstream: Addressing sexual violence against men and boys in conflict." Briefing paper prepared for a workshop held at the Overseas Development Institute, London. Vol. 14. 2014.

(Northern Ireland) Order 2008 recognise males as both prospective perpetrators and targets of sexual offences.

The Criminal Law Amendment Act of 2007 in the Republic of South Africa has broadened its rape definition to encompass victims of both genders. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 stipulates that the act of sexual penetration committed by an individual ("A") with a complainant ("B") without B's consent constitutes the offence of rape, provided that A acted unlawfully and intentionally. Furthermore, the revised definition of "sexual penetration" preserves its gender-neutral nature. As per the French Penal Code, rape is considered a non-discriminatory offence irrespective of the gender of the victim or perpetrator. This is because any form of sexual penetration, regardless of its nature, that is carried out through violence, coercion, intimidation, or unexpected means, is deemed to be an act of rape.⁸

According to Segen's Medical Dictionary, "rape is a form of sexual assault that involves forced anal intercourse, perpetrated by either a male or female. The victim is typically unable or unwilling to provide uncoerced consent. In cases of male rape, the term often refers to instances of sexual violation of a man by another man, particularly in situations of incarceration or within certain socioeconomic contexts. The World Health Organisation and the United States government have recently expanded the definition of rape to encompass individuals of all genders. According to the World Health Organisation (WHO), rape is characterised as the act of penetrating the vulva or anus through physical force or coercion, regardless of the degree of penetration, using a penis, other body parts, or an object, by either a male or female. As per the updated definition by the Federal Bureau of Investigation (FBI), rape is inclusive of non-consensual oral penetration by a sexual organ, in addition to penetration of the vagina, any other body part or object."⁹

The evolution of international laws pertaining to rape has progressed from a narrow definition of non-consensual penile-vaginal penetration to encompass non-consensual penile-orifice and penetrative-orifice acts. The act of a man inserting his penis or any object or body part into the anus or mouth of a woman is deemed to be a form of rape and therefore constitutes an offence. According to the Indian legal framework, rape is a crime that is exclusively perpetrated by a male against a female, thereby disregarding the possibility that a male could also fall prey to such an

⁸ Vojdik, Valorie K. "Sexual violence against men and women in war: A masculinities approach." *Nev. LJ* 14 (2013): 923.

⁹ Mitra, Monika, Vera E. Mouradian, and Marci Diamond. "Sexual violence victimization against men with disabilities." *American journal of preventive medicine* 41.5 (2011): 494-497.

offence and become a victim. Furthermore, the statement fails to recognise the possibility of a female perpetrator being involved in the commission of said crime.

The provision outlined in Section 377 of the IPC pertains to the criminalization of carnal intercourse that deviates from the natural order. Notably, this provision does not classify the act of inserting a foreign object or body part into the anus of a male as a form of sexual assault, whether it is deemed natural or unnatural. This is in contrast to the stipulations outlined in Section 375 of the IPC. The prescribed maximum penalty of ten years of imprisonment as per section 377 of the IPC may not be commensurate with the gravity of the offence if the victim succumbs to death or is left in a state of permanent vegetative condition as a result of the said act.¹⁰

The extent of physical and psychological harm experienced by a male victim of such an offence is comparatively lesser than that of a female victim of rape. In December 2018, the Delhi High Court rendered a verdict that rendered IPC Section 354 legally binding. The inclusion of a gender-neutral provision in Section 354A of the IPC has enabled the recognition and penalization of sexual harassment against individuals who identify as third gender. Furthermore, individuals who identify as transgender do not conform to traditional binary gender categories of male or female and are often subjected to non-consensual sexual acts, particularly in the context of sodomy. It is worth noting that there is currently a lack of legal recourse available for victims of such assaults. Conversely, the ambiguity regarding the categorization of sexual assault against them as falling under either section 375 or section 377 of the IPC remains unresolved.¹¹

Recent developments

The incidence of male rape in India is frequently underreported due to cultural factors. Even in cases where a survivor does report the crime, the legal system is deficient in recognising and penalising such offences. The legal system frequently fails to recognise these occurrences and reinforces misconceptions such as the belief that "males cannot be subjected to rape," "male victims do not experience the same consequences as female victims of rape," and "male rape is not a significant issue." In relation to this particular scenario, Jai Vipra, a member of the Think-tank Centre of Civil Society in New Delhi, advocates for the use of gender-neutral language in

¹⁰ Turchik, Jessica A., Claire L. Hebenstreit, and Stephanie S. Judson. "An examination of the gender inclusiveness of current theories of sexual violence in adulthood: Recognizing male victims, female perpetrators, and same-sex violence." *Trauma, Violence, & Abuse* 17.2 (2016): 133-148.

¹¹ Choudhary, Ekta, Merideth Smith, and Robert M. Bossarte. "Depression, anxiety, and symptom profiles among female and male victims of sexual violence." *American journal of men's health* 6.1 (2012): 28-36.

rape legislation. 38 According to Section 375 of the IPC, rape is defined as an act committed by a man against a woman. However, this definition fails to recognise the possibility of male victims and female perpetrators of such a heinous crime. While the Protection of Children from Sexual Offences (POCSO) Act of 2012 addresses sexual assault against child survivors of both genders, the category of adult male victims remains subject to varying interpretations. The legal provision outlined in section 114 A of the Indian Evidence Act [IEA] is not extended to male victims of section 377 IPC, in contrast to its application to female victims of rape.¹²

Following the Nirbhaya incident, there was an emergence of male rape survivors who shared their experiences, such as a Chennai-based individual who authored a widely circulated blog detailing his recollections of being sexually assaulted. In 2013, the Centre implemented a temporary measure through the Criminal Law (Amendment) Ordinance, which replaced the term "rape" with "sexual assault". This modification rendered the crime gender-neutral, thereby eliminating the gender-biased connotation associated with the term "rape". The decision made by the government was met with opposition from certain individuals who identify as human rights advocates and women's rights activists. This group contended that rape is a manifestation of patriarchal dominance, stemming from the misuse of male authority and entitlement. This ultimately led to the downfall of the ordinance, as stated by the Centre for Civil Society in 2014. One could posit that the gender-neutral classification of the offence of rape would not diminish its gravity or the legal proceedings associated with it. The expansion of the scope of applicability of recognising male and transgender victims of such crime will broaden its reach.¹³

The offence of sexual assault may have its genesis in the exploitation of authority within a patriarchal societal structure, however, the anguish experienced by the victim is not contingent upon their biological sex. Regarding the crime of rape, individuals of either gender who are victimised experience significant trauma that can have enduring effects and result in a highly distressing experience. Based on the available statistical data regarding the prevalence of male victimisation worldwide, it can be concluded that male rape is a genuine phenomenon.

If it is possible to render sexual assault against minors as gender-neutral, then it may be worth considering whether the Indian laws pertaining to rape could also be revised to reflect similar

¹² Walters, Mikel L., et al. "The national intimate partner and sexual violence survey (NISVS): 2010 summary report." (2011).

¹³ Mulder, Eva, Antony Pemberton, and Ad JJM Vingerhoets. "The feminizing effect of sexual violence in third-party perceptions of male and female victims." *Sex Roles* 82 (2020): 13-27.

principles. Substituting the term "rape" with "sexual assault" within the definition represents a potential solution to address gender bias concerns, as observed in the POCSO Act. It could be contended that in cases where females are victimised, they may experience a greater degree of suffering than their male counterparts. Consequently, it may be argued that in order to ensure legal equity, punishment should be predicated on the similarity of the offence committed rather than the similarity of its impact. The gender of the perpetrator should not be a determining factor, regardless of the low percentage of male victims in a country with a population of 1.33 billion.¹⁴ However, even such a small percentage is significant. It is acknowledged that sexual victimisation presents a significant risk to the well-being of women and girls. However, there exists a substantial population of male victims that has been neglected in scholarly investigations, press coverage, and official reactions.

In order to comprehensively comprehend the various types of sexual victimisation, it is imperative to conduct a gender-sensitive analysis of sexual victimisation that enables the disclosure and reporting of instances of sexual assault experienced by adult males. Given that gender-inclusive rape laws are recognised by most international legal frameworks, it is imperative that Indian rape laws be amended to include provisions for prosecuting cases of rape against adult males, as well as implementing rehabilitative reforms.¹⁵

The legal definition of rape may inadvertently perpetuate gender bias, which could potentially hinder research efforts on male victims of sexual assault. Researchers who adhere to legal definitions of rape may inadvertently exclude male victims from their operational definition of rape. Hence, it is imperative to devote complete attention to the delineations, classifications, and forms of sexual victimisation that require reassessment to eradicate gendered and heterosexual prejudices.¹⁶

¹⁴ Manivannan, Anjali. "Seeking justice for male victims of sexual violence in armed conflict." *NYUJ Int'l L. & Pol.* 46 (2013): 635.

¹⁵ Hester, Marianne, et al. "Exploring the service and support needs of male, lesbian, gay, bi-sexual and transgendered and black and other minority ethnic victims of domestic and sexual violence." Bristol: University of Bristol (2012).

¹⁶ Breiding, Matthew J. "Prevalence and characteristics of sexual violence, stalking, and intimate partner violence victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011." *Morbidity and mortality weekly report. Surveillance summaries* (Washington, DC: 2002) 63.8 (2014): 1.

1.2. REVIEW OF LITERATURE

“Patil A, Parashar A, Himanshi, Shreshtha R. Adult Male Victims of Rape: Need of Legal Recognition in India. J For Med Sci Law 2020;29(2):50-56”. According to the authors, the feminist framing of sexual violence has failed to acknowledge the existence of male victims of sexual violence as a tangible reality. The underreporting of male sexual violence, coupled with the reluctance of victims to come forward, may significantly contribute to the dearth of legal action taken in cases of male sexual victimisation. Throughout history, the occurrence of sexual victimisation among adult males was commonly believed to be infrequent, if not entirely implausible. The lack of recognition of adult male victims of sexual assault or rape has resulted in a dearth of legal services and other remedial measures, which are comparatively less developed and less significant than those available to female survivors. It can be argued that in instances where females are victimised, they may experience greater suffering than males. As a result, it may be suggested that punishment for the perpetrator should be based on the similarity of the crime committed rather than the similarity of the impact on the victim, in order to uphold the principle of equality before the law. It is imperative to direct comprehensive attention towards the definitions, categorizations, and types of sexual victimisation that require revision in order to eradicate gender bias.*Prof. (Dr.) K.D. Gaur’s, “Textbook on the IPC”* The user presents a comprehensive examination of various segments pertaining to the issue of violence against women, incorporating the latest legal precedents. The Criminal Amendment Act, 2013 is a legislative measure that emphasises the necessity of amending the IPC, 1860, with regards to criminal offences. The aforementioned literary work is widely acknowledged as a highly dependable and conventional instructional material within the field of criminal law.¹⁷

B.K. Pal in his very authentic book “Problems and concerns of Indian Woman”, This text delineates the challenges that women have encountered in their pursuit of parity within their households and communities. This publication comprises a collection of research papers presented by diverse authors and research experts during a spirited seminar focused on the topic of "Issues and Challenges Facing Women."¹⁸

Vasudha Dhagamwar in her very authentic book “Law, Power and Justice: The protection of personal rights in the IPC”¹⁹ (1992) The aim of this analysis is to examine the role of the judiciary

¹⁷ K.D. Gaur, A Textbook on the Indian Penal Code, (4th Edition, Universal Law Publishing Co., 2013).

¹⁸ B.K. Pal, problems and concerns of Indian Woman (ABC Publishing House, 1987)

¹⁹ Vasudha Dhagamwar, Law, Power and Justice: The protection of personal Rights in the Indian Penal Code (Sage Publications, New Delhi, 1992).

in relation to the issue of violence against women. The societal norms often result in the stigmatisation of women who have experienced violence. The judiciary system may need to align with the prevailing societal perspective regarding female victims.

Aakansha Latala and Ishika Agarwal, "The Silent Male Rape Victims in India," International Journal of Law Management & Humanities (Vol. 3 Iss 5; 434) The present study undertakes a critical analysis of the issue of male rape in India. The legal system does not currently recognise instances of rape perpetrated against males. Male rape is a pervasive societal issue that can have significant adverse impacts on the victim. The issue of safeguarding women from sexual violence, rape, and other forms of sexual exploitation has been given considerable thought, leading to the implementation of several legal measures.

Geetanjali Gangoli in her book Indian Feminisms: Law, Patriarchy and Violence (2007) This study aims to offer a meticulous portrayal of the legal campaigning that formed an integral part of the Indian Women's Movement during the 1970s and 1980s. Furthermore, it seeks to analyse the influence of this movement on both social and legal awareness. This text explores the feminist conceptualization and its influence on seemingly egalitarian matters, such as women's rights and citizenship. In this particular context, the inquiry also delves into the inability of a faction of Indian female activists to address economic concerns that may have resulted in a clash with their political and ideological associates. Gangoli's analysis of gender violence parallels that of Western feminists, as she scrutinises the legal control of female sexuality and the intersection of feminism and governmental intervention.

Ruth Graham, "Male Rape and the Careful Construction of the Male Victim," Social Legal Studies 2006, The topic of sexual assault has garnered significant attention in social research. However, a predominantly feminist perspective has tended to overlook male victims, despite the importance of highlighting the gendered nature of sexual assault as a social phenomenon. The dearth of empirical data on male rape notwithstanding, it is feasible to trace the theoretical evolution of male rape as a social issue within the discourse of social research. The examination of this development holds significance due to the potential implications of the current trajectory of research on male rape for the theoretical framework surrounding sexual assault as a whole. This study analyses the academic discourse surrounding male rape, with a particular emphasis on the construction of a credible male victim through the lens of sexual difference, sexuality, and hierarchies of sexual harm. The analysis highlights the challenges associated with the notion of

'male rape' and emphasises the importance of researchers of sexual assault to comprehensively consider the experiences of both male and female victims.

Sanjay Deshpande, “Sociocultural and Legal Aspects of Violence Against Men,” *Journal of Psychosexual Health* 1(3–4) 246–249, 2019, The topic of domestic violence is commonly associated with women. The male gender is often perceived as the instigator. Nevertheless, owing to the socioeconomic transformations that have impacted the family configuration in contemporary times, domestic violence is not restricted solely to women. Males are also subjected to various forms of abuse including verbal, physical, emotional, psychological, and sexual abuse. Male individuals often refrain from reporting instances of abusive behaviour and may consequently become silent victims of the associated repercussions. The current legal framework in our society is biased towards women as victims of violence, resulting in a lack of justice for men who find themselves in vulnerable situations within their families and communities. The present article endeavours to examine the scope of this issue and elucidates its underlying factors and ramifications. The implementation of gender-neutral legislation for domestic violence is deemed necessary. The categorization of domestic violence as spousal violence warrants consideration.