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BREAKING THE SILENCE: LEGAL RECOGNITION FOR MALE VICTIMS IN INDIA

~Anugraha P

OUTLOOK ON CHALLENGES FACED BY MEN IN GENDER-BIASED CRIME PERCEPTION

In India, a notion in the arena of crimes is that men are considered as primary perpetrators or offenders, and women are imaged as victims of assault or innocent bystanders. People often treat offenses based on the gender of offenders. Society is less likely to report a man hitting a man than a man hitting a woman. A report in 2023 shows that people, mostly women, are not ready to accept violence against men¹.

When it comes to suicide, the rate among men is alarmingly increasing, as per the Lancet Regional Health Report². Especially in India, the suicide death rate in men rose from 22.7 in 2014 to 27.2 in 2021. Overall, there is an increase in 33.5% growth in suicides in men³.

The stigmatization in society which characterizes a crime against its gender stereotypes has led to serious injustices to men. Peeping into the unfair circumstances faced by men, it may be noted mainly in cases of domestic violence against men and Sexual offenses faced by men, at times when the rights of women are protected and various programs are coordinated focussing on their empowerment, the dilemma in legal framework for ensuring men's rights is still far from sight. Gender-neutral laws for ensuring equal rights in society are inevitable, where equality lies in the inner soul of the Indian Constitution.

¹ Graso, Maja, Reynolds, Tania & Aquino, Karl, Worth the Risk? Greater Acceptance of Instrumental Harm Befalling Men than Women, 52 Arch. Sexual Behav. 2433 (2023), <https://doi.org/10.1007/s10508-023-02571-0>.

² The Lancet Regional Health - Southeast Asia, The Lancet Regional Health - Southeast Asia 2023; 16:100265 (published online 17 August 2023), <https://doi.org/10.1016/j.jansea.2023.100265>.

³ India News, NDTV News Desk, "Suicide Rate 2.6 Times Higher Among Indian Men Compared To Women: Study," updated August 29, 2023, 2:19 pm IST, accessed May 28, 2024, <https://www.ndtv.com/india-news/alarming-rise-in-suicides-by-indian-men-between-2014-and-2021-lancet-study-4338759>.

LEGAL ARENA COVERING THE CRIMES AGAINST MEN

Men often keep silent in cases of violence against them by reason of societal stereotypes and they are supposed to be the quiet victims of serious crimes. In India, domestic violence laws are mainly intended to protect women; on the other hand, there are men who are suffering the consequences of marital relationships, but the sad reality of the legal system points to the discrimination of men in this plot. Even in cases of sexual violence, law efficiently aims to protect women, but the balance against its rights of men and its enforcement is ambiguous or absent in this area too.

INSIGHTS INTO DOMESTIC VIOLENCE LAWS

The Protection of Women from Domestic Violence Act 2005, is the primary legislation addressing issues of domestic violence in India. The title itself and the stigmatization in society discourage men from seeking relief from domestic violence. The presumption of women suffering from violence in the household is long in the tooth; there are reported, unreported, and significant problems of domestic violence against men. Study reports in particular areas in India show that 52.4% of men are victims of gender-based violence. Out of 1000 men, 51.1% experience violence from their wives or partner⁴. This shows the alarming stage in the need for a gender-neutral approach towards the issue from the core level.

In the definition clauses of the Protection of Women from Domestic Violence Act 2005, under section 2(a) states that “aggrieved person” means any woman who is, or has been, in a domestic relationship; thus there is an exclusion of males being an aggrieved person in domestic violence, for instance, in section 2(q) “respondents” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person. The law itself remarks male persons as an offender and a females as victim of offenses.

In 2016, the judgement of the Supreme Court marked a remarkable contribution in this domain, the court has emphasised gender-neutral laws as seen in the case *Hiralal P Harsora v. Kusum Narottandas Harsora*⁵, in which it was observed that “violence knows no gender”.

The question before the court was based on the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act 2005, and the court decided that the expression “respondent” states any “adult male person” which cannot be interpreted as there are only men who are engaged in violence so the term ‘adult male’ must be deleted since the

⁴J. S. Malik & A. Nadda, A Cross-Sectional Study of Gender-Based Violence Against Men in the Rural Area of Haryana, India, 44 Indian J. Cmty. Med. 35, 35-38 (2019), https://doi.org/10.4103/ijcm.IJCM_222_18.

⁵ AIR 2016 SC 4774.

words do not square with Article 14 of Indian Constitution. It is clear that law cannot presume only a man to be the offender, as in the case of domestic violence, the respondents may be females also.

Nevertheless, there are instances where Hon'ble courts have pronounced the position that there is no need for relevant laws for the protection of men against domestic violence; it happened in the case of *Aruna Parmod Shah Vs. Union of India*,⁶ where the court stated that, "The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of parliament."

The reality of the issue opens up the gate of images where men are physically, emotionally, and sexually abused in households and the realm of law which is not concerned about their rights except seeking a divorce from the abuser. Men do not have provisions for legal remedy in case of domestic violence apart from the fact that it is grounds for divorce under section 13 of the Hindu Marriage Act 1955. This Act establishes a ground for divorce if the petitioner is treated with cruelty after the solemnization of marriage.

According to the reports, the prevalence of male partner violence in India is much higher than the USA, Canada, and the UK for about 19.3% based upon Partner Abuse State of Knowledge Project⁷. Spousal violence can be faced by any gender, which is a result of an unequal power hierarchy. The fact is mostly women are victims of such violence⁸, yet it doesn't guarantee that men are not subjected to spousal abuse. NFHS⁹ data provides insights on violence against husbands in Indian households. In this 21st century, the sufferings of men are not unheard. Thus, enactments must aim to protect both men and women in this matter so as to ensure equal rights guaranteed under Article 14 of the Indian Constitution.

TRENCHES OF SEXUAL ABUSE

Sexual assaults are often categorized as crimes against females only, and also, in these offenses, men are seen as offenders. Sexual offences against men have a long history in our country and around the globe. According to the present estimates, over 27% of men and 32% of women

⁶ Writ Petition (CrI.) No.425 of 2008

⁷ S. Deshpande, Sociocultural and Legal Aspects of Violence Against Men, 1 J. Psychosexual Health 1 (2019), <https://doi.org/10.1177/2631831819894176>.

⁸ International Institute for Population Sciences & ICF, *National Family Health Survey, 2015-16* (2017), <https://dhsprogram.com/methodology/survey/survey-display-355.cfm>.

⁹ National Family Health Survey, India

have faced sexual assault at least once in their lives¹⁰. Molestation is an abusive sexual activity that takes advantage of various situations; in cases, molestation happens against children, women, and even men. But in all the above cases, remedies and penalties are exposed only against offenses against children and women; in the case of men, the legal terrain in India often or completely ignores the sexual offenses faced by men. This is a significant area which requires serious legislative and judicial attention.

Sexual assault results in serious societal stigmatization and also, mental and physical difficulties for the victims. These disorders and difficulties are the same in case of male victims¹¹. In modern society, female victimization has been incurred in legislation and has public acceptance. POCSO Act 2012, Indian Penal Code 1860, and various other legislations have stressed the importance of offenses against women and men. In IPC 1860, only one provision which deals with unnatural offenses features the sexual assault faced by men but to a limited extent. Section 377 IPC states about sodomy, the intercourses against the order of nature which can include sexual intercourse by a man against another man without his consent, on 6th of September 2018, in *Navtej Singh Johar v. Union of India*¹² J. Dipak Mishra, in his judgment, decriminalized consensual intercourse in adults, including homosexual relationships. In such a provision also, a molestation or sexual assault faced by an adult male from a female cannot be challenged in any of the existing legal aspects. Not only from the female sections of society but also from the transgender community in all the public platforms where they are unable to raise their voices against such offenses faced because of the absence of protection in law. The sad reality is that the Indian Penal Code 1860 (IPC) being replaced by Bharatiya Nyaya Sanhita 2023 (BNS) also repealed the provision for unnatural offences, such that now the legal protection for men against the unnatural offences are also being impaired to them.

Section 375 IPC only covers the offence of rape against women, and the reason behind such ignorance of male victims is justified on the basis that,

1. It is physically and biologically impossible for a woman to rape a man.

¹⁰ Basile, K.C. & Smith, S.G., Sexual Violence Victimization of Women: Prevalence, Characteristics, and the Role of Public Health and Prevention, 5 Am. J. Lifestyle Med. 407, 407-17 (2011), <https://doi.org/10.1177/1559827611409512>.

¹¹ Zachary D. Peterson, Erin K. Voller, Mary A. Polusny & Maureen Murdoch, Prevalence and Consequences of Adult Sexual Assault of Men: Review of Empirical Findings and State of the Literature, 31 Clin. Psychol. Rev. 1 (2011), <https://doi.org/10.1016/j.cpr.2010.08.006>.

¹² AIR 2018 SUPREME COURT 4321

2. It is considered grievous to forcefully penetrate someone than to coerce someone to penetrate you.
3. And typically, rape is a gendered crime.

These reasons and justifications can be accepted in case of a rape committed by women against men, but the case in sexual assault is quite different. Sexual assault without penetration can be committed by any person against another irrespective of the gender, this concern is not covered by any of the existing legal provisions of Indian law. Same protection is available in offences against women, which is a serious discrimination of equality as per Article 14 of Indian Constitution.

The law recognises various forms of rape like, male-on-female rape (section 375, 354 A, 354B, 354C, 354D of IPC along with other provisions and laws), male on male rape (section 377 of IPC which is repealed in BNS), female on female rapes (section 376 D of IPC; gang rape), transgendered or transsexual rape (this too can only be punishable under section 377 of IPC). in all the above categories it is clear that, a women cannot rape or even sexually harass men and in reality, there are cases of men being the victims of at least sexual assault. There are cases where women have physically sexually assaulted men and studies¹³ shows that, mere factor of erection or ejaculation cannot be stated as evidence of consent, it does not indicate that the subjects consented to such stimulation¹⁴, and in cases of rape, slightest degree of penetration amounts to rape so that male arousal is not taken into factor, thus, male arousal cannot be taken as consent also arousal is not a necessary condition for rape¹⁵. Apart from this, as legal definition of rape is not limited to penile-vaginal penetration, there are other kinds of rapes as, oral intercourse etc. these inferences clearly demonstrates that a women can also rape a man, and rape can be a gender-neutral offence.

Forthwith, the data showing men facing other sexual offences like women includes, unwanted sexual contacts, non-contact unwanted sexual experiences is about 12.2% and in cases of, “made to penetrate” and sexual coercion it becomes 22.2% among men (without counting the rape among men). Throughout their lifetimes, 1 out of every 33 men have encountered either an attempted or completed rape, with 75% of these incidents happening before they turned 18,

¹³ Sarrel, P. M., & Masters, W. H., Sexual Molestation of Men by Women, 11 ARCHIVES OF SEXUAL BEHAVIOR 117 (1982), <https://doi.org/10.1007/BF01541979>

¹⁴ Levin RJ, van Berlo W., Sexual arousal and orgasm in subjects who experience forced or non-consensual sexual stimulation -- a review, 11 J. CLIN. FORENSIC MED. 82 (2004), [10.1016/j.jcfm.2003.10.008](https://doi.org/10.1016/j.jcfm.2003.10.008), PMID: 15261004.

¹⁵ Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560; Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204

and 48% before reaching the age of 12¹⁶. By the time they reach 18 years old, 1 in 4 girls and 1 in 6 boys will have experienced sexual assault¹⁷. These data show that men are victimized like women, in all circumstances, in the same intensity but not in the same number. However, in conclusion, from the above parameters, while men might not be as often harassed as women, they still suffer with the same intensity as women do, and their experiences should not be overlooked or used to justify inequality.

In India, societal norms usually depict men as perpetrators and women as victims, leading to a biased treatment against men in the strata and stigmatizing men to remain silent in those cases. This bias is reflected in the legal terrain also, as seen in enactments like the Protection of Women from Domestic Violence Act 2005, even in Indian Penal Code 1860, and still after the replacement by Bharatiya Nyaya Sanhita 2023, this inequality and unavailability of rights of men is subsisting in the arena. Increasing suicidal rates among males also evidently represent the distress suffered by men owing to these abuses and many a time they remain silent due to the societal stereotypes. Judicial precedents showcase a varying trend in this matter, portraying the need for serious focus in order to ensure equal rights and remedies to all sections of humanity. The absence of legal provisions for male victims in sexual abuse cases against perpetrators perpetuates discrimination. More than sixty-three countries around the globe have adopted gender neutral laws in respect to develop equality in legal perspectives¹⁸. These may not be a satisfactory solution for the issue; nevertheless, they can have a greater impact on the legal field of men's rights and its remedies.

Men suffer from violence in the same intensity as women, though not frequently, this area need urgent supervision and their rights and availability of remedies has a significant momentum to get considered by the authorities. Legislative and societal changes are crucial in this sector to ensure the rights and equality for men and also to all the sections of our society.

Silence should not be mistaken as the absence of suffering. Instead, it is a consequence of societal stereotypes and gender standards that compel men to remain voiceless.

¹⁶ Tjaden, P., & Thoennes, N., Prevalence and Consequences of Male-to-Female and Female-to-Male Intimate Partner Violence as Measured by the National Violence Against Women Survey, 6 VIOLENCE AGAINST WOMEN 142 (2000), <https://doi.org/10.1177/10778010022181769>

¹⁷ Finkelhor D, Hotaling G, Lewis IA, Smith C., Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors, 14 CHILD ABUSE & NEGLECT 19 (1990), [10.1016/0145-2134\(90\)90077-7](https://doi.org/10.1016/0145-2134(90)90077-7).

¹⁸ Regina Graycar & Jenny Morgan, The Hidden Gender of Law 260 (2002).

