



**DEVELOPING CRIMINAL
JURISPRUDENCE WITH REFERENCE
TO SEXUAL OFFENCES AGAINST
MEN**

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Abstract

The Indian Penal Code, 1860 section 375 lays down the definition of ‘rape’ which begins by stating “A man is said to commit rape if he [...]”. The provision works on the foundation that only a man can commit rape; further into the provision, which enunciates what all acts entail rape, it is repeatedly quoted that only the (anal, oral, etc.) penetration of a woman is considered rape. This particular provision negates the possibility of sexual offence being committed by a woman against a man and/or by a man against a man. Law is not static, but something always evolving with time and societal progressions. However, in this respect, it has become outdated and primitive.

These developments become all the more relevant when considered that the Supreme Court decriminalized section 377 and came to recognize same-sex relationships but fails to recognize same-sex rape. Attempts have been made in the past whereupon a gender neutral definition of rape was produced (J.S.Verma Committee Report) but discarded. This paper will move to develop criminal jurisprudence in the Indian context with references to J.S. Verma Committee Report, POCSO (Amendment) Bill, 2019 and drawing contemporary examples from foreign countries.

This paper will also delve into evidentiary

matter on sexual offences against men, i.e., what facts are relevant for proving commission of a crime.

The research methodology used in the paper will be doctrinal in nature, with the use of case laws, legal books, articles and legal databases.

KEYWORDS: sexual assault, rape, gender neutral, male victim

Introduction

For the past few decades, upcoming approach and the recent political topics of “sexual violence” in international human rights has focused only on the abuse of women and girls and not the uncommon men. Though in the similar time, sexual violence against males continues to develop in prison and other forms of detention. Men have been mentally abused and sexually humiliated during tedious situations like armed conflict, such as the Abu Ghraib scandal in Iraq. Childhood sexual abuse of boys is alarmingly common nowadays; in fact, the full majority of those abused by the Roman Catholic clergy in the United States were all boys. Also, the sexual assault against gay men remains unchecked and untouched due to assumptions that, as was once commonly assumed about women, gay men who have been raped must have “asked for it.”

According to research, females as per data are more likely to be victimized with the offence of rape than males. Despite the common perception, however, males constitute a large number of rape victims. Maybe obviously, given the absence of cultural worry about male assault and the aversion of male casualties to report, information about male



assault is needed in the society. We do realize that the latest U.S statistics show that 15.2% of the individuals who have encountered assault in the course of their life are men. The Centers for Disease Control and Prevention and the National Institute of Justice found that 92,700 grown-up men are persuasively assaulted every year in the United States, and that roughly 3% of every American man—an aggregate of 2.78 million men—have encountered an endeavored or finished assault in the course of their life. The Bureau of Justice Statistics' National Crime Victimization Survey found that 11% of complete rape casualties are male.

An article published in India Today on August 14 entitled "Educator among four reserved for homosexuality in Muzaffarnagar" is only one more case of a particular qualification that has remained solidly tucked away in Indian speech: the possibility that men can be sodomized yet not assaulted.

As Section 375 of the Indian Penal Code stands, assault is something that only a man can do to a lady. There is no space for grown-up male casualties, significantly less female culprits. In spite of the fact that kid overcomers of both genders are secured by the Protection of Children from Sexual Offenses Act 2012, current assault laws forget about an enormous swathe of male casualties, who can't approach because of a paranoid fear of disgrace and an absence of lawful response.

As a previous executive of a Lesbian Gay Bisexual Transgender advising and sexual wellbeing community in New Delhi, we verify first-hand to the many such male and transgender survivors in the country's capital.

They have likewise been very much recorded in legitimate cases, for example, Naz Foundation versus the Government of National Capital Territory of Delhi and in announcing by household human rights associations. Why, at that point, this latency around a word as out of date as "homosexuality"?

The Law Commission, in its 172nd Report submitted in 2000, recommended gender-neutral definition of rape by replacing the term "rape" in the IPC with the words "sexual assault". The Centre accepted the proposal to make definition of rape gender-neutral after the December 16, 2012, gang rape of Nirbhaya. The Justice Verma Committee, set up after the horrific incident, recommended use of the word "person" in place of "woman" to cover all victims of sexual violence.

The then UPA government thus notified the Criminal Law (Amendment) Ordinance in February 2013 which adopted a gender-neutral definition of rape. However, following criticism of the change by a number of women's rights activists, the Criminal Law (Amendment) Act, 2013, passed by the Lok Sabha on March 19, 2013, and the Rajya Sabha on March 21, 2013, reverted to the gender-specific definition of rape. Those who opposed gender-neutral rape laws questioned their relevance in the context of an intrinsically patriarchal and gendered society where sexual violence evidently acts as a medium to exercise power over the female/non-male body.

The Verma Committee recommended in 2013 that though the perpetrator of sexual violence should continue to be identified as a man, the victim be categorised as gender-neutral to cover sexual violence against men,



women and transgender persons. The Criminal Law (Amendment) Act, 2013 unfortunately restored the gender-specific definition of sexual violence for both the perpetrator and the victim. Justice Leila Seth, one of the members of the Verma Committee, noted that “this was a serious mistake, and Parliament failed to understand the injustice done thereby to so many men and transgender people”. It is this lacuna in law which the centre should seek to fill while responding to pleas for gender-neutral laws against sexual violence.

The Law Commission, in its 172nd Report, said: “Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence.” While the Commission’s concerns were justified, its recommendations to opt for “sexual assault” for “rape” and to substitute “person” for either male or female, were not very convincing to the legislators and civil society alike.

Bills and Amendments: No room for male victims?

The most common belief that surrounds the concept of rape is that men cannot be raped for they are physically more resilient and more probable to ward off any potential attacker. There have been correlations made between the perspectives of a bystander towards the victim and the victim’s ability to resist the attack- meaning a victim who would resist more profusely would be considered to have been raped and those who

did not resist as aggressively, attract less sympathy. There is a certain victim blaming culture that views victims are less sympathetic or more, some being deemed as not being victims at all based on circumstances of the act.¹ It needs to be understood that in order for men to be recognized as being potential victims of rape the legislators need to condone two possibilities- men on men rape and women on men rape. The current legal position in India stands that “a man is said to commit rape who...” and the criteria for what constitutes as rape all follow with the phrase “of a woman” so as to induce that rape can only be done to a woman and only by a man.

Once the possibility of men on men sexual assault begins to be considered, it would go a long way to prove that men can be potentially overpowered by other men too and wouldn’t be able to ward off aggressive attackers in all situations. There’s a certain pressure being placed on male victims of sexual assault to be able to prove that the act was not consensual and forced, the person needs to display high levels of resistance to back up their contention. This position becomes more difficult to prove when the perpetrator is a woman- with the wider population insinuating that if the man was unable to resist a woman then they themselves are at fault. The whole structure of rape myths function on the assumption that men are physically stronger and would, under normal circumstances, be impervious to rape. This assumption has to have its roots in traditional

¹ Jonathan L. Bateman & Cristen Wathen, *Understanding Rape Myths: A Guide for Counselors Working With Male Survivors of Sexual Violence*, VISTAS ONLINE,

https://www.counseling.org/docs/default-source/vistas/understanding-rape-myths.pdf?sfvrsn=1cdb432c_8.



orthodox masculine values of power, dominance and strength.

While documenting the circumstances of most male victims of sexual assault it was observed that four out of five times the victims were beaten up, punched, burnt, strangled and cut, to get their way with them. These instances demonstrate that victims, both male and female, can succumb to sexual assault by not being able to fight back; it is not a woman only narrative.

It was only after the brutal gang rape case in the heart of National Capital Territory in December 2012 that Anti-rape laws were taken up for reconsideration and a J.S. Verma Committee was set up to suggest reforms and to further strengthen the rights of survivors of sexual assault.

“It is unfortunate that such a horrific gang rape (and the subsequent death of the victim) was required to trigger the response needed for the preservation of the rule of law—the bedrock of a republic democracy.”²

Just how the country realized, after this brutality, that there needs to be changes in the current criminal justice system, it needs to be understood that as each day passes, we're depriving a potential male victim of sexual assault the opportunity to protect themselves in the eyes of the law for the primordial and erroneous reason that only a "man is said to commit rape" and only with a woman. There need not necessarily be a new barbaric case along the lines of Nirbhaya gang-rape case for the Judiciary and Legislators to realize that men can also be raped- by woman or other men, both.

In the J.S. Verma committee report it was noted that-

“Correction of the societal mindset of its gender bias depends more on social norms, and not merely on legal sanction. The deficiency in this behalf has to be overcome by the leaders in the society aided by the necessary systemic changes in education and societal behavior. Attitudinal changes to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of ‘equality’ in all spheres for the womenfolk. The ‘workmen’ must improve the work culture instead of quarreling with the ‘tools’. In the Committee’s view, without the improvement in this aspect, mere additions in the statute book are of no avail. Focus on the machinery for implementing the laws is, therefore, a significant part of this exercise. The Committee hopes that the concern and urgency shown by the Government in constituting it will not wane with the passage of time and the publication of our report; and that the constitutional promise of gender justice in a social order with the egalitarian ethos will soon be realized without much ado. A positive reaction to the tragedy which triggered this response of the government would be the real tribute to the memory of the victim of gang rape and to the honor of the womenfolk.”

Even after the efforts of the Committee made for this purpose the suggestions for a gender-neutral rape provision wasn’t considered and

² Report Of The Committee On Amendments To Criminal Law, 2013 (India).



in 2013 a bill introduced in Lok Sabha and passed by both the houses read as follows-

“375. A man is said to commit "rape" if he—
 (a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or
 (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
 (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
 (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,”³

In 2018 a Criminal Law (Amendment) Ordinance noted that-

In the case of rape of minors, according to the POCSO Act, the victim may either be male or female (and the offender could also be of either gender). However, in cases of adults under the IPC, rape is as an offence only if the offender is male and the victim is female. The Law Commission of India (2000)⁴ and the Justice Verma Committee (2013) had recommended that this definition of rape should be made gender neutral and should apply equally to both male and female victims.

The Ordinance does not address this issue.

³ The Criminal Law (Amendment) Bill, 2013, No. 63, Acts of Parliament, 2013 (India).

⁴ Review of Rape Laws 2000, No. 172, Law Commission of India, March 2000.

However, The POCSO Act 2019, referred to above, was the very first instance of a Bill being passed, in over a decade, which was gender neutral with regards to the victim and the perpetrator only deviation from IPC being that it was applicable on minors, to protect the interest of Children.

“The said Act is gender neutral and regards the best interests and welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.”⁵

In a similar tone, towards the end of 2019 a Transgender Persons (Protection of Rights) Bill was introduced in Lok Sabha and by November 2019 had been passed by both the houses. This Bill recognized people’s right to self-identify them as what gender they belong to and laid out an elaborate all-encompassing definition of transgender. It further penalized, amongst other things, “sexual abuse” of a transgender person.

“18. Whoever, —
 [...] (d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse,”⁶

Sexual Abuse defined as - Includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman, [Section 3 Explanation

⁵ The Protection Of Children From Sexual Offences (Amendment) Bill, 2019, No. 22, Acts of Parliament, 2019 (India).

⁶ The Transgender Persons (Protection Of Rights) Bill, 2019, No. 169, Acts of Parliament, 2019 (India).



(ii), Protection of Women from Domestic Violence Act, 2005 (India)].⁷

“Whoever” again insinuates that the ambit was kept wide as to include men, women, and a third gender. This Act was as far as the Indian Parliament has gone to widen its ambit, for if under this law, it can be entertained that transgender woman and man both are under a potential threat of sexual abuse from someone, then why is the Indian Penal Code so far behind to bring adult male members under the same umbrella. Logistically, a transgender woman, with her biological sex being male, who hasn’t gone through Sex Reassignment Surgery or hormone therapy, would have the body structure and bone structure of a male. Hence suggesting that in the process of looking out for best interests of the Transgender community, the legislators acknowledged that a transgender person having the physical strength of a man may also be subjected to sexual abuse. It seems atrocious then that the same recognition does not lie with cisgender men.

How prevalent is sexual assault against men?

“We assume that race and gender are strongly linked to sexual harassment because they are key dimensions of social stratification. Because sexual harassment is about power, we would expect less powerful people (e.g., women, minorities, and younger individuals)

to be particularly vulnerable to harassers. Indeed, women are usually found to be at higher risk than men to all types of harassment.”⁸

The above extract is one example amongst many that lay emphasis on the probability of female sexual harassment cases to be more than that of male cases. This undermining nature of the society towards male survivors of sexual assault make it even more difficult than it already needs to be to safeguard both men and women. In a survey of the Centers for Disease Control and Prevention it was recorded that 40.2% gay men, 47.4% bisexual men and 20.8% heterosexual men, in **The United States**, reported sexual violence other than rape during their lifetimes.

Which bids the question- Is sexual violence perpetrated on men really that prevalent? Approximately one in 45 men has been made to penetrate an intimate partner during his lifetime.¹⁰ UN reports on sexual violence in armed conflict are now attuned to the problem and sometimes carry a sentence along the lines that ‘men and boys are also subject to sexual violence’. However, such a sentence, if indeed present, is usually the sole reference to men and boys in any report. Accordingly, this brief recognition has not translated into concrete efforts on behalf of male victims, be they mechanisms for raising awareness of the problem, focused research

⁷ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

⁸ Linda Kalof et al., *The Influence of Race and Gender on Student Self-Reports of Sexual Harassment by College Professors*, 15 GENDER AND SOCIETY 282, 283 (2001).

⁹ M.L. Walters et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation*, CENTERS

FOR DISEASE CONTROL AND PREVENTION (2013), http://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf.

¹⁰ M. J. Breiding et al., *Intimate Partner Violence in the United States — 2010*. CENTERS FOR DISEASE CONTROL AND PREVENTION (2014), http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf.



agendas on the issue, or strategies for prevention.¹¹

Wales & England: It is estimated that there were between 366,000 and 442,000 female victims and between 54,000 and 90,000 male victims. With regard to the most serious sexual offences, the survey estimated the number of females who were victims ranged between 68,000 and 103,000 and male victims between 5,000 and 19,000 per year.¹² Contrary to popular belief, **India** is also a hub of mass unreported rape or sexual assault cases. In a very peculiar fashion India recognizes that men can be sodomised, but they allegedly can't be raped. Although the modern usage of the word 'rape' extends also to the forcible sexual intercourse by a woman with a man, the dictionary meaning of the said word as well as the offence of rape as defined in the Indian Penal Code speak only of forcible sexual intercourse by a man with a woman. It can, therefore, be said that a woman can also be guilty of sodomy. So will be the position in the case of the offence of bestiality. The discrimination, therefore, can be alleged by the husband only on the basis that these two grounds, viz., sodomy and bestiality, are not available to him for claiming dissolution of his marriage whereas the same are available to the wife for the purpose.¹³

In a Mumbai (India) case that was reported by Reuters, a 14-year-old boy was playing cricket when a man took him into a room and shut the doors and windows and then proceeded to rape him or better yet "sodomise" him. There is an unparalleled effect of sexual assaults on the minds of impressionable kids as so was observed in this case for the kid, soon after, killed himself by drinking rat poison.¹⁴

The government has not only made any attempts to bridge the gap between discrimination as regards sexual assault victims and perpetrators, but in the aftermath of Nirbhaya gang rape case also increased the minimum punishment for girl victims but made no changes to minimum sentencing for boy victims.

Although there has been talk of government wanting to make the IPC provision on rape-gender neutral, which was corroborated by a public official that did not want to be named, who said that whatever shall be applicable to girls will also be to boys- there has been no substantial moves made yet.

The boy's medical reports said the child had been "sodomized".

How a Man's rape cannot be taken as evidence

There is considerable proof to suggest that narratives about rape, rapists and victims of rape contribute greatly in molding societal

¹¹ Sandesh Sivakumaran, *Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict*, 92 ICRC 259, 260 (2010).

¹² Jil Matheson, *An Overview of Sexual Offending in England and Wales*, THE NATIONAL ARCHIVES (January 6, 2016), <https://webarchive.nationalarchives.gov.uk/20160106113426/http://www.ons.gov.uk/ons/rel/crime-stats/an-overview-of-sexual-offending-in-england---wales/december-2012/index.html>.

¹³ Anil Kumar Mahsi v Union of India, (1994) 5 SCC 704.

¹⁴ Krishna N. Das & Aditya Kalra, *In India, boy victims of sex crimes don't get talked about*, REUTERS (MAY 8, 2018, 3:40 PM), <https://www.reuters.com/article/us-india-rape-insight/in-india-boy-victims-of-sex-crimes-dont-get-talked-about-idUSKBN1I9146>.



cognitions. Amongst these factors are myths revolving around rape and sex-role stereotypes, wherein the latter goes a long way to affect assailant victimization; the mere contention that a woman victim “must be wanting it” or that women want to be raped subconsciously and that men are “more interested in sex and likely to enjoy it” is where we fail them. One of the reasons by which female assailants are absolved of responsibility works on the function that men would have to be actively participating for them to be engaged in sexual intercourse. Adding to the stereotypical load is the belief that men are incapable of being raped for the simple erroneous reason that they can’t function sexually unless aroused.¹⁵

This assumption is called into question by evidence that men are capable of functioning sexually in a variety of intense emotional states; including fear and anger just as female victims sometimes report vaginal lubrication and orgasmic responses while being traumatically raped.

However, almost exclusively, most of the empirical research on social responses to rape and rape victims have been women centric, something that needs to change- for as the society evolves, so does the law. We live in times where men have gone to the moon, cars drive themselves, we have rovers on mars, and yet being objective about rape laws seems like a monumental task.

Protection under The Indian Evidence Act, 1872

¹⁵ Ronald E. Smith et al., *Social Cognitions about Adult Male Victims of Female Sexual Assault*, 24 THE JOURNAL OF SEX RESEARCH 101, 102 (1988).

¹⁶ DURBA MITRA & MRINAL SATISH, *Testing Chastity, Evidencing Rape: Impact of Medical*

“As early as 1952, the Supreme Court of India ruled that conviction for rape could be based solely on the victim's testimony. However, as in any other case, testing the reliability of the testimony of the witness was critical to determining guilt. In rape cases, defence counsels employed section 155(4) of the Indian Evidence Act, 1872 which permitted them to cross-examine the victim to show that she was of a generally immoral character. The defence could use evidence of the past sexual history of the woman to attack or create doubt about that the veracity of her claim of rape, based on an assessment of her sexual behaviors as promiscuous or otherwise improper.

Alongside witness testimony about the immoral behavior of the woman, medical evidence was often used as an objective tool to assess a woman’s sexual habituation continues even today. Despite the change in law excluding a woman’s past sexual history through medical tests that claim to demonstrate women’s habituation to sexual intercourse.”¹⁶

In 2003 section **155(4)** of the Indian Evidence Act, 1872 was omitted and the section before omission read as “when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.” Another set of Amendments emerged in 2013 inserting section 53A and substituting certain words of section 146.

Before substitution s.146 read as “Provided that in a prosecution for rape or attempt to

Jurisprudence on Rape Adjudication in India, 49 ECONOMIC AND POLITICAL WEEKLY 51, 52 (2014).



commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.” which was changed to “[Provided that in a prosecution for an offence under Section 376, 177[Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 376-E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.]”

On observation it is revealed that both the provisos are essentially talking about the same thing only difference being the substitution broadened the ambit of s.146 which also has its reasons attached to the amendments that came into place after the Nirbhaya gang rape case. The phrase “general immoral character” was broadened to include previous sexual history and that this couldn’t be taken up in cross examination to try and prove consent. It must be made clear that this section falls under the heading of permissible questions in cross-examination whilst a separate s.53-A was inserted specifically to address questions as to character.

Section 53-A reads “In a prosecution for an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, 68[Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 376-E of the Indian Penal Code (45 of 1860) or for attempt to commit

any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

This provision goes straight to the relevance of character and past sexual history in order to validate consent of the victim. Emphasis also is laid on the terms “shall not” in all of these sections for it is important for our criminal justice system to take into account the ramifications of a trial for sexual assault. There is already proof as to the inhibitions of the victim as regards the stereotypical society and stigma associated with male victims in addition to the prevalent problem of victim blaming while victimizing the assailant; there needs to be a downright demarcation of societal nuances to what is relevant to constitute a crime. The offence of sexual assault shouldn’t be excluded for the same reason that section 114-A presumes that if the woman says there wasn’t consent, the court will proceed with that presumption. “[...] and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.” These sections while only talk with respect to woman victims; the protection of these sections should also be imparted to male victims whereupon an amendment is instituted in the Indian Penal Code to make the definition of rape gender neutral.

There needs to be an air of gravity and seriousness attached to crimes of such depravity that attack the very conscience of a person to live their life with dignity which is guaranteed by article 21 of the Constitution of India. The law is already imperfect and pro-accused and lest this protection of



presumption is not given to the victims of sexual assault, the law would further deviate from furnishing justice to the wronged.

Given the society's assumption as regard to male rape, it is imperative that a man's sexual experience be made irrelevant for it would degrade the victim to paint them to be a result of their past doings; to bring up a man's character would be to proceed with the notion that sexual assault isn't something that is gender-race-color-age neutral. A person is not only the product of their misdoings and shouldn't be resolved by the court to be so.

Medical examination of Rape victims

In the event that Bodhisattwa Gautam v. Subhra Chakraborty, Supreme Court said that assault is a wrongdoing against essential human rights and an infringement of the casualty's most significant principal right, to be specific, the privilege to life in Article 21. In Francis Coralie v. Association of Territory of Delhi, Supreme Court said that the option to live isn't just about creature presence. It doesn't constrain itself to insurance of appendage and life; it is substantially more than this. It likewise implies option to live with human pride. Option to live with human respect is the most fundamental component of right to life under article 21. A demonstration of assault not simply abuse the one's privilege of physical body, the individual's self-rule over body yet in addition her pride, mental solidness. It is a wrongdoing against essential human rights. It turns out to be progressively significant and critical that how an assault survivor is dealt with. The hardware like police and clinical should be progressively delicate and cautious while associating with them.

State of Karnataka v. Manjanna

Before Supreme Court's judgment in 2000, the system for clinical assessment of assault casualties was extremely remiss. Specialists would continue with the assessment, simply after the solicitation of the police. Because of this, it got essential for assault casualties to record a FIR for getting a clinical treatment. This mentality towards the assault casualties was exceptionally uncalled for and unreasonable, in light of the fact that the specialists overlooks the power and grievousness of the offense and the human viewpoint, and just concentrations upon the procedural angle.

In the State of Karnataka v. Manjanna, said that clinical assessment of assault casualties is a "medico legal crisis." It is the privilege of each casualty and an obligation of each emergency clinic to therapeutically look at the casualty before documenting of a lawful grievance, and the emergency clinic in line with the person in question, can thereafter record a protest. A medical clinic may get a casualty of assault when casualty willfully reports to the emergency clinic, on demand by the police or by the court.

The above cases have been cited so as to build a foundation where only the cases and the possible outcomes are only for female rape victims. There are such tests to examine if a man has been raped or not. The common two-finger test which is most commonly used to examine a female rape victim cannot be used in males. Similarly there have been no such tools devised to check whether a man has been raped or sexually abused or not.

If the act of sodomy has been performed then Trauma to the anus can cause tears in the anus or the rectum and may worsen hemorrhoids (piles) or cause temporary problems when using the bowel accompanied by persistent



pain around the anus. These injuries can be used as an evidence for a male rape victim.

In Canada the admissibility of Sexual Assault Evidence Kits is being questioned, whether they actually go on to help the victim or do they work against them. “The kit requires the administration of physical “tests” as well as documentation in which the woman involved answers questions about the assault and her current and past medical history. SANEs record all visible injuries on diagrams indicating their type and size and are required to document any signs or reports of physical resistance as kit components. In some regions, health professionals who administer the kit provide written assessment of the woman’s emotional status, scrape under fingernails, and ask if she scratched or otherwise “fought back.” Kit requirements and evidence of this sort can reinforce the myths that “real” rape involves a certain emotional response and attendant physical injury and that “good” women resist.”¹⁷

It goes to show how contemporary countries are so far ahead in bringing in innovative ideas to curb this menace while India is still lagging behind in recognizing that there is a huge chunk of the population that succumb to sexual assault, especially the poor who as it is don’t have resources to fall back on when their rights are being violated.

Conclusion

In this paper, we argue that India should introduce gender neutral rape laws to its Indian Penal Code by way of amendments,

lest another set of atrocities like the Nirbhaya gang-rape case would happen and laws will have to be made *after* its occurrence rather before. If the Indian Judicial System waits around for a case as such to happen so that the issue is arisen, the assailant would potentially be booked only for sodomy since the law gives no protection to male victims either from males or females. The first step towards redefining rape would be to cast down all the myths and stereotypes that revolve around men and rape- essentially starting from a generalizing statement that men are physically stronger and therefore cannot be raped. There are multiple cases quoted in India itself that have reported men being forced upon for penetrative anal intercourse. The second myth that the society harbors is that one cannot have sexual intercourse unless one is actively participating in it too. Contending that sexual arousal can’t take place unless the victim is “liking it” which is proven wrong by evidence of traumatic arousal and lubrication being a thing. India was blessed with the Justice J.S.Verma committee report, wherein, it was first reiterated what “any person” is said to commit rape. However, in order to bring men under the protection of the penalizing laws one has to consider that it is in fact a two parted job. One, to establish that any person can commit rape, also include transgender male, female in that definition of “person” for there seems to be no reason why any-one gender should be left out of that definition (especially after being given recognition and protection for their interests in a separate Act). Two, to amend the various acts that constitute as rape to remove “of

¹⁷ JANE DOE, SEXUAL ASSAULT IN CANADA: LAW, LEGAL PRACTICE AND WOMEN’S ACTIVISM 367 (Elizabeth A Sheehy, 2012).



women” and to insert “and of man” or to make it “any person” for all the provisions are just as relevant in the case of men. The broadened ambit of sub-section (3) would be the saving grace perhaps to prevent any other form of manipulation of the body that degrades the person, violates their dignity and is done forcefully for sexual gratification, and of course adhering to the five forms of violation of consent.

To act as evidence of rape, there is all but the victim’s testimony that, as per s114-A of the Indian Evidence Act presumes the word of a rape victim (woman) to be true and proceeds with that presumption. Such revisions may bring a measure of fairness and respect to the process of reporting a rape as girls and women will no longer have to undergo the duress of the finger test or other tests that scrutinize their past sexual history and violate their privacy and dignity. Courts have also failed in their responsibility to implement the law by blindly accepting medical jurisprudence books as the primary authority on evidence of rape. Further, by permitting doctors to opine about women’s sexual history through their medical reports, courts adjudicating rape often fail to follow law, which prohibits the consideration of sexual history of the victim in determination of rape. Courts must be more critical and cautious in their usage of medical manuals and evidence based on these manuals in order to effectively safeguard constitutional rights. For over a hundred years, medical jurisprudence

textbooks for India have been extraordinarily influential in the legal process.¹⁸ Aside from setting aside sexual history, there are also recourses of medical evidence that can prove lacerations in the anal region or evidence to place the assailant at the scene of the crime in order to prove guilt. The fundamental role that societal notions play in dictating what is the “norm” and what is impossibility is what needs to undergo a logical-empirical check for the advancement of the fundamental and human rights of male rape victims to protect their privacy and dignity.

¹⁸ DURBA MITRA & MRINAL SATISH, *Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India*, 49 ECONOMIC AND POLITICAL WEEKLY 51, 57 (2014).