



IS RAPE AND SEXUAL ABUSE CONFINED TO WOMEN IN THE SOCIETY?

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ABSTRACT

We live in a society where hypocrisy prevails that males are the offenders and can't be the victim to rape and sexual abuse. This leads to more myths such as males who undergo sexual abuse and rape are not 'REAL MAN'. Despite being one of the largest democracies in the world our society fails to acknowledge the fact that boys get sexually abused and raped by both male and female perpetrators. One approves or not in the concept of masculinity, but boys are not men. It's a fact that they are weaker than those who exploit them sexually by exploiting or coercing them into unwanted sexual encounters and keeping quiet about them as they possess the power to dominate them easily. There is no doubt about the fact that we are developing the legal framework but the development is slow, it can be felt by the fact that it took five years for the Protection of Children against Sexual Offences Act, 2012, to develop a gender-neutral law related to child abuse whether mental or physical. After the alarming report presented by the Ministry of Women and Child Welfare in the year 2007 which stated some disturbing statistics which brought the light of sexual abuse towards boys. The reality is slightly different for our stereotype thought process that girls are the only victim but unable to see thousands of silent victims who are generally boys. It's time to break the silence and accept the injustice present in society. This paper shall attempt to put a spotlight on the issue of sexual abuse against

the male child and laws present in different countries in the world. Our paper will also address the implications of assumptions that discourage boys from disclosing sexual harassment cases and propose reform for the same.

Keywords - Sexual abuse, gender-neutral, male child, victim, and silence.

INTRODUCTION

Are we ready to accept that there are boy rapes and sexual abuse in our society?

- The basic concept prevailing of rape in the society is confined to females but it's high time to break the silence and the mindset in the society that rape and sexual abuse are limited to only females. It's time for society to make a more effective approach towards the problem of child sexual exploitation which is under the carpet. The society still lives in the illusion that since the male is the dominant sex, which further makes them believe that men are capable enough to defend themselves. From childhood, they are taught that they are not supposed to cry or be weak instead since they have the power and capability of dominating the society as they are stronger as compared to the other half population living in the society which is females. However, we need put a spotlight and leave behind the stereotype thinking that rape and sexual abuses are those criminal offense committed against the females only by the male-dominated society because in the reality is way more, where a male child is treated as a male adult forgetting the fact that he is just a child as same as girl child.

- Some of the victims and their families are also reluctant to report sexual harassment and abuse which they witnessed despite the



fact that the happening of such events will leave a lifelong impact on their mental health. We are usually afraid that if we speak up about such an attack, people will doubt or start questioning their sexual orientation and designate them as homosexual or bisexual. All these results in the least number of cases get reported and thousands of male victims to cover the attack and deny their victimization resulting in the percentage increase of rape cases.¹ It can be stated that a significant percentage of sexual abuse and rapes victims are boys.

What do we understand by child sexual abuse? In layman's language, it can be stated as mistreating a minor physically and mentally by an adult for their own sexual pleasure. The World Health Organization (WHO) defines Child Sexual Abuse as "*the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society*".² Therefore it can be said that when a child is physically or mentally harassed with sexual intent, and it is seen in several cases that these kinds of attacks are done by a known person to the child who possesses the power over the child and is trusted by the child. Child sexual abuse also tends to include:

- a. An adult who exposes his or her genital organs to the child and encourages the child to do the same for him or her, i.e. exhibitionism.
- b. An adult touches the child's genital organ with hands or other objects and persuades the child to touch the genitalia, i.e. kissing and fondling the child.
- c. An adult with genital, oral, and vaginal intercourse with a child with or without penetration, i.e. rape and sodomy abuse.
- d. An adult persuades or allows a child to listen to, read, or display some pornographic content.
- e. An adult pressuring an adolescent to participate in some sexual activity.
- f. An adult who marries a minor or a minor who marries another minor is considered a forced relationship.³

In 2017 a TV show was aired, name *Pehredaar Piya Ki* portraying a story where a 22-year woman is married to a 9 year-old-boy, to protect him from the enemies and relatives after the death of the boy's parents.⁴ There was an ancient practice in India where young girls were forced to married, much older man as a part of our culture which was prohibited by the provision mentioned in Section 5(3) of The Hindu Marriage Act 1955, putting the lower limit as 18 years of age that a bride needs to be a major. But the

¹ Diva Rai, "Critical Analysis of Rape of Man in India", April 16th, 2017, <https://blog.ipleaders.in/critical-analysis-of-rape-of-male-in-india/>, (last visited August 18th, 2020)

² WHO, Child Sexual Abuse, Chapter 7, Publication, <https://www.who.int/>, (last visited on August 19th, 2020)

³ Guest Post, "What Are The Laws Related To Child Sexual Abuse In India", April 29th, 2016,

<https://blog.ipleaders.in/laws-related-child-sexual-abuse-india/>, (last visited August 21st, 2020)

⁴ Kiran Manral, "Too Many Of India's Young Boys Suffer Sexual Abuse And Our Silence Is Criminal", www.buzzfrd.com, https://www.buzzfeed.com/kiranmanral/too-many-of-indias-young-boys-suffer-sexual-abuse-and-our?utm_term=.xqDwpZ9pX#.kdvpAYJA9, (last visited August 20th, 2020)



show brings a completely new twist to the mindset and by encouraging such shows; we are probably exposing the young boys to believe that it is okay to marry older women being a minor and get romantic in both ways emotionally as well as physically.

MYTHS IN SOCIETY RELATED TO BOYS RAPE AND ABUSE

1. It is next to impossible that boys can get sexually abuse or rape because they are least vulnerable as their abuse leads to society believe that they are not **“REAL MAM”**, but the society fails to acknowledge that they are just boys and are vulnerable. It is important to note that child abuse is a criminal offense against minors (below the age of 18).⁵
2. The misconception that if a boy encountered sexual pleasure during the violence, he desired it and/or liked it, and if he only desired the sexual encounters in part, then that is treated as their own fault.⁶ There is a need to understand that with an erection or even an orgasm, males can respond to sexual stimulation-even in traumatic or painful sexual circumstances. That is the way male bodies and brains function. They are manipulated in such a way that they start to stave for attention and actually feel that they want to have the pleasure and feel that it’s their own fault and failure.
3. Both boys and girls are the survivors of sexual abuse but the society fails to acknowledge that boys are also the survivor of the abuse the same as girls. The data available from the 2007 report by the

Ministry of Women and Child Welfare on child abuse in India:⁷

- a. Around 52.94% of the total reported cases of child sexually abuse are boys.
 - b. Almost 90% of the reported have been exposed to serious sexual harassment including sexual assault, making the child fondle private parts, making the child show private body parts, and filmed in the nude. Among these, the majority were boys (57.3%).
 - c. 53.07% of the survivor of the child sexual abuse as per the reported cases.
 - d. For all the children alleging sexual harassment (anus, penis, or oral sex penetration), 54.4% were boys.
- The data clearly shows that the number of boys who faced abuse in almost all forms of sexual harassment was equal to, if not more than, the number of girls who faced harassment.
4. An assumption is present in the society that boys who are sexually abused and raped are mostly gay, and it happened because of their sexual orientation.⁸ There is no suggestion that a gay man is more likely than a straight man to engage in sexually aggressive conduct and some reports also say it is less likely. Yet sexual harassment is not a "relationship" of sexuality – it is an assault. The abused person's sexual orientation really isn't important to the abusive relationship.

5. The myth that the boy is **“LUCKY”** when he is abused by a female:

Not only should boys not be sexually assaulted by women, but this theory also suggests that any sexual contact with women

⁵ “Myths and Facts”, lin6.org, <https://lin6.org/get-information/myths/>, (last visited on August 22nd,2020)

⁶ Ibd.

⁷ Aarambh India, “ Alarming: Stats Reveal Widespread Sexual Abuse of Boys In India”,

November 9th, 2017, <https://www.youthkiwaaz.com/2017/11/even-boys-need-protection-from-abuse-heres-what-the-data-shows/>, (last visited on August 22nd,2020).

⁸ Supra 5



is a badge of honor. In fact, sexual encounters that are premature, forced, or otherwise harmful are rarely positive. Being molested sexually by men or women can cause a number of physical, mental, and psychological issues. Boys still fail to understand that it was a form of sexual assault or rape. Women may also be sexually violent offenders just as often as men.⁹

LEGAL FRAMWORK IN THE OTHER COUNTRIES

Many countries have made changes in the laws regarding rape. The countries that recognized rape laws are Ireland, UK, and Scotland. Canada and USA also tried making laws regarding the same.

In 1994, UK re-classified adult rape in criminal justice and public order, which provides that non-consensual anal as well as vaginal penile penetration, removing the previous term buggery from statute¹⁰. By this law, the male rape has received equal status as of the female. In 2003, the act came which is called sexual offences act, this act added and further defined sexual offence legislation with more definitions from previous acts like 1956 and 1994 sexual offences act.

To incorporate non-consensual penile penetration of mouth in the way expelling the ambiguous, wide range of indecent crime from the books. But still, in UK the definition of rape does not include penile penetration, rape crime committed by females. Then came "Sexual offences act 2003," first, the

seemingly vague concept of "in-decent assault" was reframed into two less ambiguous criminal acts. The first was the newly created offence of "assault by penetration" which made non-consensual sexual penetration by any object an illegal act.¹¹ In this, it carries maximum punishment, which is of life imprisonment. Therefore, in UK for the first time, the law came against the female offender who commits a sexual offence and the offender could be punished with the same sentence as that of male sexual offender.

Scotland has made changes in the rape laws by "Sexual offences (Scotland) Act, 2009" and amended the definition as: "*The intentional or reckless penetration of the penis in the vagina, anus, or mouth without the consent of the person or without any reasonable belief that the person's consent has been taken.*"¹²

The definition of rape was also redefined by Northern Ireland. Firstly the criminal justice order, 2003 included the non-consensual intercourse with the person both male as well as a female in the definition of rape. It also includes oral rape.

The reality of these progressions to the legitimate status of male sexual assault survivors have just been made inside the most recent thirteen years - less so in Scotland and Northern Ireland - feature the degree to which the UK lags behind that of different countries in this regard. Mid-route through the second

⁹ Soumya Pradhan and Surbhi Grover, "Don't Boys Get Raped? Breaking The silence on sexual abuse of the male child in India", RLR VOLUME V ISSUE I, April 30th, 2018, https://journal.rostrumlegal.com/dont-boys-get-raped-breaking-the-silence-on-sexual-abuse-of-the-male-child-in-india/#_edn16, (last visited August 18th, 2020).

¹⁰ Michelle lowe & Paul rogers, *The scope of male rape: a selective review of research, policy, and practice*, <https://www.researchgate.net/publication/317729028> *The scope of male rape A selective review of research policy and practice*, (last visited on August 22nd, 2020).

¹¹ Ibid.

¹² Section 1, Sexual Offences (Scotland) Act, 2009



decade of the 21st century, it remains the legitimate truth that, in the UK, somebody having a penis must commit assault.

In US law the definition of rape has been changed by the Federal Bureau of Investigation's Uniform Crime Report (FBI-UCR) in January 2012, which stated as follows:

The penetration without the consent of the victim (male or female), in vagina or anus by any part of the body or by any object or oral penetration by their sex organ or of another person, it does not matter how slight it is, it will amount to rape. Now in these countries, the voice of the male is louder than before.

Australia has also made changes in its legislation by the inclusion of the gender neutralized term "*person*".

Canada has made various major changes in the legislation to make sexual offences as gender neutralize. Canada passed the bill in 1983, which abolished the offence rape and categorized it into basic sexual assault, sexual assault with a weapon or threatened violence, and aggravated sexual assault. Therefore, it clarified that this crime can be committed by both the gender.

GENDER- SPECIFIC LAWS IN INDIA

"Sexual abuse is no gender-specific, then why not talk to all kids about this?"

- Mumbai Police

In Indian laws, the act of penile penetration is considered as rape or insertion of any foreign object into the vagina without the consent of women or a girl.

As per section 375 of Indian penal code 1860, states the definition of rape as "*sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when*

she has been intoxicated or duped or is of unsound mental health and in any case, if she is under 18 years of age"¹³ According to the definition, ***it can be inferred that a rape offender is always men and women is always a victim.*** If any object is inserted into the anus or mouth of men, then it will not amount to rape because of the fact that they are male.

Thus, there is no specific provision for male rape in Indian laws. This signifies that there is no provision if a male is raped by another male or female. Earlier this provision only contains the act of sexual intercourse but due to the increase in heinous crime the above-mentioned provision was amended.

In the case of *Sakshi v. Union of India*¹⁴, the SC gave direction to consider the present issue to the Law Commission of India, which leads to the 172nd law commission and the commission released their report. The recommendations given in the report are:

- There should be enactment of gender-neutral laws.
- Suggestion to change laws in Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act, and in POCSO Act.
- The report has also clarified that to consider a rape lack of physical resistance is not material.
- The scope of section 376 of IPC was also broadened by introducing members of the army, guardians, relatives, or any individual who will be in a place of trust or if the commission of the report is during communal violence and rape of female less than 16 years of age likewise come under the ambit of section 376.

¹³ Indian penal code, No. 45, Acts of Parliament, 1860.

¹⁴ (2004) AIR SC 3466.



RECOMMENDATIONS BY THE J.S. VERMA COMMITTEE

Afterward, the Criminal Amendment Act, 2013 was enacted by the parliament which included recommendations of the J.S. Verma committee. However, the suggestions of the committee to make rape provisions gender-neutral were not expressly added in the “*Criminal Law Amendment Act, 2013*.” Hence the laws are still gender-specific thereby only protecting the rights of the women. No provision is there for males or transgender to protect their interest when it comes to a crime like rape and sexual abuse. Recommendation of J.S.Verma Committee report was dismissed: It was rejected because of the societal view that a crime like rape cannot be committed by women and of the view that cannot be the victim of the rape or any other sexual offence. Despite this, the survey was organized which reported 28.6% of male are survivors of sexual assault and 54.8% of females were reported as the offender. PUCL Karnataka has also conducted the survey, wherein it was reported that transgender community and male also becomes a victim of rape. In the same report it was found that among the college students 10.5% of men were raped and 10.5% of men suffered from an attempt to rape. A survey was conducted by the Centre for Disease Control and Prevention in which 67.4% of females were reported as perpetrators of sexual assault.¹⁵ This shows men are likewise the victims of the sexual offence yet because of the thought of society; they are not getting any remedy against sexual offences.

In the other case of *Priya Patel v State of Madhya Pradesh*¹⁶, in this case the women were charged with the offence of gang rape, but the court rejected the accusation and stated, “Women cannot be said to have an intention to commit rape.” Furthermore, number of cases was registered in the police stations because of this old ethos; these cases have not been taken seriously because they are not committed by men. In today's scenario, women are given equal status to men in every field; there is an urgent requirement to make the gender-neutral laws which provide equal protection to male, women, and transgender irrespective of their gender. The gender-specific laws are violating the right to equality under Article 14 of the Indian Constitution, though Article 15 allows having gender-specific law, but when the offences are done against both, the law should protect both.

In this way, improvement in the public eye has ordinarily mirrored that there is a requirement for unbiased laws however significant action has not been taken at this point. The Union government has made one move to make laws impartial. KTS Tulsi, Parliamentarian, and Senior Lawyer presented a private part's bill before Rajya Sabha in July 2019 to make the sexual offenses laws impartial. The bill has been purposed and suggested that the word, 'man' and 'women' ought to be supplanted with 'any person' so any individual who is explicitly pestered can look for remedies under criminal laws. By introducing the word any person it will also include transgender as the other gender can also be sexually harassed by anybody. This bill will be very effective to

¹⁵ Gazala Praveen, *Gender-neutral rape laws: A need for Indian society*, November 5, 2019,

<https://blog.ipleaders.in/rape-sexual-assault-law-india-gender-neutral/>, (last visited August 19, 2020).

¹⁶ (2006), 6 SCC 263.



create gender-neutral laws if came out as an act.

SHORT COMINGS OF THE PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES ACT, 2012

The Protection of Children against Sexual Offences Act, 2012 (POCSO Act)¹⁷ was established five years after the alarming report presented by the Ministry of Women and Child Welfare in the year 2007 which stated some disturbing statistics which brought the light of sexual abuse towards boys as to develop a gender-neutral law related to child abuse whether mental or physical.

However, the Act also has considerable flaws as regards the sexual exploitation of young boys. The Act has entirely neglects to take steps related to deter sexual violence. While the Bill is designed to safeguard children from sexual harassment, misconduct and pornography, there is little that applies to the prevention of exploitation.

The language of the Act is such that one can read into it a male bias. Section 3(a) of the act defining penetrative sexual abuse uses expressly the pronoun "he" to refer to the accused. That specifically excludes women as offenders. Instead what about women engaging in digital boy rape or inserting objects into male children's anus? Or penetrative sex only applies to male organ use? For many people, there is a misconception that sexual harassment is only committed by men, this is not true. While most offenders are men, women assault both male and female children sexually as well.

Boys are not only sodomised, they are also abused. It's time to make arrangements for abused boys and help them get justice. Better late than ever.¹⁸

As per an article by India Today containing the statistics by NCRB stated that in 2017 and 2018 there was an increase in the reported cases related to rape in both female and male child, where it was seen that 204 boys were victim to rape.¹⁹ After the enactment of POCSO act reported number of cases has increased in the country.

SUGGESTIONS

Primarily, society as a whole needs to accept the fact that boys do suffer and are the survivor of rape and child sexual abuse. However, it can be seen that a number of amendments are made in the existing legal framework in India to reduce sexual abuse towards children.

- Legislation should necessarily take measures to identify boys' sexual exploitation as an major issue and to ensure that boys are safe from all kind of offenders.
- The POCSO Act, 2012 should be revised to eliminate gender inequality.
- Child helplines should be set up for boys as well the same as for girls so that they have someone to reach 24/7 whenever they are ready to talk.
- Victims and their families should be provided with the therapists and counselling respectively to overcome with their trauma and deal with the distorted perceptions about masculinity that culture has forced through their heads.

¹⁷ Protection of Children against Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012(India).

¹⁸ Supra 9.

¹⁹ India Today, "109 children sexually abused every day in India in 2018: NCRB", January 16th, 2020,

[https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12, \(last visited on August 23rd, 2020\)](https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12, (last visited on August 23rd, 2020))



- Big Stars and media could be approached for addressing the issue in the society which could make a great impact in the society same as Aamir Khan's Satyamev Jayate.

CONCLUSION

"It is better that ten guilty person escape than one innocent suffer."

- Sir William Blackstone

In order to determine the requirement of "gender neutrality" in rape or sexual abuse laws, we tried to research various range laws in Indian and other countries with the various preconceived notion of society in regards to male rape. There are lots of myths regarding male rape in the society which has been examined in the present paper. Patriarchy is a huge barrier to implement gender-neutral laws because it is very strongly presumed that a woman cannot commit crimes like rape. It is negatively affecting the male section of the society.

There are various approaches, which were made by law commission to create gender-neutral laws in rape crimes but it was rejected. There is an urgent need to define rape laws to give equal status to males as that of females. Because rape will be a rape committed to men or women by any men or women. They're a requirement of insertion of the term "Person" in section 375 of IPC. It is not right to encourage the perception that males will always be an offender or rapist and females are always victim and women cannot commit rape or sexual assault. It is possible that men can have masculine qualities and women can have feminine qualities. There is a possibility that women, at higher position in the company or in any organization can sexually harass male employees. Hence, men should not be judged on the basis of their gender. As there are no laws regarding male rape many cases are not reported or the

offender gets the lesser punishment in comparison to the crime. The *criminal law act (amendment) bill, 2019* objective is to make such development, which is required to make laws gender-neutral when it comes to punishing any kind of sexual assault. Over many years the amendments are made in rape laws when there is urgency or need of society. It is high time to break the silence against the victimization of the male section of the society. Hence the amendments should be made within the ambit of sexual offences against men.

