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Need to reform Rape-Related Provisions

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Rape is considered the most dangerous and barbarous crime. In India, it is considered that rape can be committed only against women and not against men. Transgender, bisexuals, etc., and the perpetrator must be a man and not a woman. There are many instances where a man is raped or sexually assaulted by women or by any other man. It is considered that how a man can be raped if he has Vagina or he gets pregnant. In most of the cases, the perpetrator was a close relative of the man. Almost cases in which a man is a victim of rape or sexual abuse are left unreported due to the fear of society and that society will question the manhood of the person. There are many instances where transgender are sexually assaulted by men and women and that are left unreported due to fear of their gender identity and there is no law to protect them from such abuse. This article is an attempt to disclose the real or current situation that men or transgender are facing regarding sexual abuse or violence and provides some suggestions regarding the same.

Keywords: *rape, sexual abuse, sexual assault, male rape, transgender, gender-neutral laws.*

INTRODUCTION

Rape is considered a most dangerous and heinous crime. Every day this crime is committed by someone. As per the 2020 data from National Crime Records Bureau (NCRB) about 77 rape cases were reported every single day. These are the cases that are reported but there are so many cases that are left unreported due to the so-called status or reputation of the family

member of the victim. There are also cases of male rapes but are not even recognized by the Indian Society and these cases are not even reported due to the manhood of the males as they are bullied by the society because society thinks men are stronger and they can't be raped by a woman or a man. In 2020, around 371,503¹ rape cases are reported against women in India but no rape cases are reported against men.² Definition of rape: Usually rape is considered a crime/offence against a woman. Rape is sexual intercourse between a man or a woman without the consent of the woman or the consent is so caused by coercion, undue influence, fraud, etc. Sec. 375 of the Indian Penal Code, 1860 defines Rape as when a man penetrated his penis or any object or a part of the body into the vagina, mouth, urethra, or anus of the woman against her will or without his consent, or in cases of a girl below the age of 18 years with or without his consent is considered as rape³. According to the definition of Rape under Sec. 375 of the Indian Penal Code, Rape is a crime that can be committed only by men and not by women or homosexuals or heterosexuals and is done only against women and not against men or transgender, etc.

WHY THERE IS A NEED TO REFORM RAPE-RELATED PROVISIONS

As per section 375 of the Indian Penal code, rape is an offence that is committed only by men or is only committed against a woman and not against a man, or transgender, or is not committed by a woman. In today's world or society, there are many cases where a man is raped by a woman or by a man but is left unreported. There are many laws or provisions which safeguard women from rape and especially after the Vishaka guidelines many amendments are done to rape-related provisions against women. Rape against children is also protected by the Protection of Children from Sexual Offences (POCSO) Act, but there is no provision regarding the protection of men, heterosexuals, or transgender from the offence of rape.

¹ Indian Penal Code 1860, ss 371 and 509

² Aayush Akar & Shubhank Suman, 'Critical Analysis of Rape of Male in India' (*Ipleader*, 16 April 2020) <<https://blog.ipleader.in/critical-analysis-of-rape-of-male-in-india/?amp=1>> accessed 25 July 2022

³ Indian Penal Code 1860, s 375

As per the *PEW statistics in 2014*, in the online platform also around 25% of women between the age group of 18-24 years and around 13% of men between the age group of 18-24 years had faced or experienced sexual assault or harassment.

RAPE-RELATED CASES AGAINST MEN

The centre for a civil society based in Delhi found that around 18% of Indian men have reported being forced to have sex. 16% of them claimed the perpetrator was a woman and 2% claimed the perpetrator was a man.⁴ In 2014, the Muzaffarnagar police registered a case in which an inmate was sodomized by three fellow inmates of a government run protection home. A Madras teacher was alleged to sexually assault a 12-year-old student. In 2014 a case is reported in Mumbai where a 13-year-old boy was raped in Powai and a 16-year-old student was alleged to rape or physically assaulted by 15 other boys for a year.⁵ On 18 April 2021 Lokesh Pawar posted a blog named I am a sexual abuse survivor. No, I am not a Woman. In this blog, he tells that he is a survivor of sexual abuse and is from the age of 6 years to the age of 15 years by a member of his extended family. He tells how his relative told him please do it for his happiness when he refuses to do but one day he refuses to do all those things and said no to that person. On that day he saw a rapist in the face of his relative. ⁶ There is an incident that happened in Ghaziabad on 16th June 2018 when five men sexually assaulted a 20 years old boy and inserted a foreign object in his rectum. The S P (Railways) and a commandant of the women's police battalion; R. Nishanthini conducted a study in Kerala in November 2020, in which it is found that boys are also the victims of sexual abuse. In 17% of the cases against boys, the alleged perpetrators were women.⁷

As per a study by the Government of India in 2007, around 53.2% of the children had reported being sexually abused at least once in their lifetime. Out of which 52.9% were boys. An online

⁴ 'Indian's law should recognize that men can be raped too' (*Centre for Civil Society*) <<https://ccs.in/indias-law-should-recognize-men-can-be-raped-too>> accessed 25 July 2022

⁵S usanti Sarkar, Dangerous Silence around male sex abuse in India (*Media India Group*, 4 October 2021) <<https://mediaindia.eu/society/dangerous-silence-around-male-sex-abuse-in-india/>> accessed 25 July 2022

⁶ Lokesh Pawar, I am a sexual abuse survivor. No, I am not a Woman (*The Print*, 18 April 2021) <<https://www.google.com/amp/s/theprint.in/opinion.i-am-a-sexual0abuse-survivor-no-i-am-not-a-woman/641099/%3famp>> accessed 25 July 2022

⁷ Indian's law should recognize that men can be raped too (n 4)

survey consisting of 160 men was conducted by a social activist, India Darwala related to sexual abuse. Out of which 71% of the men had accepted that they have been sexually abused when they are children. Moreover, many of them had never told about the abuse to anyone.⁸

RAPE CASES AGAINST TRANSGENDER

Transgender is considered the third gender by the Supreme Court. Transgender are people who changed their gender identity. As per the report of the U.S. transgender Survey in 2015, it is found that around 47% of transgender people are sexually abused in their lifetime. In India, there are many cases where a transgender was raped and is even left unreported because of the fear of gender identity. Some cases of a transgender being raped are:

- A transgender was raped by the prisoners and officials of Nagpur Central jail where she had been lodged since 2019 in a murder case.⁹
- Two Manipuri transgender students were gang raped by three men in Bangalore in 2019.¹⁰

In 2014-2015 a survey was conducted by the National AIDS control organization of 5000 transgender people. Around one-fifth of transgender people told that in the past 12 months they had experienced sexual abuse/ violence.

Even after the judgment of *Navtej Singh Johar v Union of India*, the condition of the transgender in our society is not improved. In today's time also they are considered impure or not seen with good eyes by the people and even by the police officers or by any person who is in authority and all these things made it easy to abuse a transgender very easily. In India, there is a law called the Transgender Persons (Protection of Rights) Act, 2019 which protects the right of transgender and protect them from the offences committed against them, and provides

⁸ Apeksha Duhan, 'Male Sexual Abuse and India' (*Maps of India*, 9 August 2008) <<https://mapsofindia.com/my-india/imo/male-sexual-abuse-and-india>> accessed 25 July 2022

⁹ Soumitra Bose, 'Transgender alleges rape in jail, moves H.C.' (*The Times of India*, 25 March 2021) <<https://timesofindia.indiatimes.com/city/nagpur/transgender-alleges-rape-in-jail-moves-hc/articleshow/81676465.cms>> accessed 25 July 2022

¹⁰ Siddhant Pandey, 'Two Manipuri trans students gang raped in Bengaluru' (*Newsbytes*, 17 March 2019) <<https://www.newsbytesapp.com/news/india/two-manipuri-trans-students-gang-raped-in-bengaluru/story>> accessed 25 July 2022

the punishment for such offences. For example, the punishment for the offence of physical abuse and sexual abuse committed against transgender is 6 months (minimum) to 2 years (maximum) and the punishment for rape of a woman is 10 years (minimum), and the death penalty (maximum).

CASES OF SEXUAL ABUSE AGAINST HOMOSEXUALS AND BISEXUALS

Homosexuals and bisexuals are not out of danger from sexual abuse or violence. These are the community that faces three sexual violence or abuse at a higher rate as compared to straight people. The Centers for Disease Control and Prevention's (CDC) National Intimate Partner and Sexual Violence Survey formed for the LGB people found that 44% of lesbians and 61% of bisexual women have experienced sexual abuse from an intimate partner. About 26% of gay men and 37% of bisexual men have faced sexual abuse or violence from their intimate partner and 46% of bisexual women have been raped. Many LGBT people are facing corrective rape and these cases are left unreported. Corrective rape is done to correct the sexual orientation of the LGBT by the family member or close relative. Even in the 21st century, all these things exist. The thoughts of the societies are still conservative or conformist. We have to accept the people as they are and not do such things as corrective rape.

STEPS ARE TAKEN TO REFORM RAPE-RELATED PROVISIONS IN INDIA

- In March 2000 the 172nd law commission in India recommended that to protect male victims from sexual abuse or violence gender-neutral laws should be made by the parliament.¹¹
- A gender-neutral bill (Criminal Law Amendment Bill, 2019) was introduced by KTS Tulsi, a senior lawyer and parliamentarian in the Rajya Sabha in July 2019 before the parliament made laws gender-neutral in India.¹²

SUGGESTIONS

- Sexual education is provided in every school or educational institution in India.

¹¹ Aayush Akar & Shubhank Suman (n 2)

¹² *Ibid*

- The word men and women must be replaced by the word Person in the definition of rape provided under section 375 of the IPC.
- The punishment for sexual abuse or physical abuse committed against transgender should be increased or should be similar to that of women.
- Parliament should make gender-neutral laws where the matter is sexual abuse or violence.
- Parents should make their children feel comfortable to share their feelings and to share their experiences if any wrong has been done to them.

CONCLUSION

Over the year we saw tremendous positive changes in the history of the criminal justice system, especially after the Vishaka guidelines and the Nirbhaya rape case. The lawmaker passes the laws or amends the law according to the need of the society. As we are living in the 21st century and are considered a developing country but we are going backward when it comes to gender-neutral laws. In India, there is no single legislation that deals with gender-neutral laws. Even the Supreme Court refuses to entertain the plea for gender-neutral laws by stating that the legislation will make the law regarding this when it feels there is a need in society. Most of the cases are left unreported regarding sexual abuse of men, transgender, homosexuals, etc. because no law in India can protect them from the offence of sexual abuse or violence. The law should also recognize men, transgender, and homosexuals as the victim of the offence. It is not always the men who commit the crime sometimes they are also facing sexual abuse or violence. To protect transgender, men, and homosexuals from sexual abuse or violation, the legislation should make or pass gender-neutral laws.