

July-December 2020

Volume 29

Issue 2

PRINT ISSN: 2277-1867

ONLINE ISSN: 2277-8853



JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

Official Publication of Medicolegal Association of Maharashtra

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**MULTISPECIALITY, MULTIDISCIPLINARY, NATIONAL
PEER REVIEWED, OPEN ACCESS, MLAM (SOCIETY) JOURNAL**

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JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

(Official Publication of Medicolegal Association of Maharashtra)
Email.id: mlameditor@gmail.com

PRINT ISSN:
2277-1867

ONLINE ISSN:
2277-8853

Original Review Article

Adult Male Victims of Rape: Need of Legal Recognition in India

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Article Info

Key words

Received on: 27.10.2020

Accepted on: 15.12.2020

Sexual violence,
Adult male survivor,
Gender bias,
Rape laws.

Abstract

Framing sexual violence as a feminist issue has ignored to recognize male victims of sexual violence as distant reality. The less reporting of male sexual violence with shyness of victims to come forward much contribute to lack of legal action concerning male sexual victimization. Historically, the sexual victimization of adult males was deemed to be, if not possible, then certainly rare. Non-acknowledgment of adult male victims of sexual assault or rape has made availability of legal services and other remedial measures underdeveloped and unimportant relative to those for female survivors. For a moment considering females suffer more than males as a victim, it may be argued that the punishment should be based on sameness of crime and not on sameness of effect, to ensure equality before law. There is need to bring full attention to the definitions, categories, type of sexual victimization that should be revised to eliminate gender bias.

1. Introduction

The early decades have seen sexual violence as a social evil with the emphasis given to the ordeal of female victims or survivors of sexual crime. Feminists have conceptualized the sexual victimization of women by men as a manifestation of power within a rape-supportive patriarchal society. ¹ As a result, many legal and support services have been established for women victims to mitigate the adverse effects of sexual violence. As per Fisher N and Pina A, these feminist movements have made a considerable contribution to the academic and public awareness of rape. ²

However, framing sexual violence laws, male victims of sexual violence are ignored. The less reporting of male sexual violence with shyness of

victims to come forward much contribute to lack of legal action concerning male sexual victimization. Historically, the sexual victimization of adult males was deemed to be, if not possible, then certainly rare. Non-acknowledgment of adult male victims of sexual assault or rape has made availability of legal services and other remedial measures underdeveloped and unimportant relative to those for female survivors. A flurry of research since the mid-1990s, has begun to explore the prevalence, scope and consequences of male sexual victimization, with new ideas for service delivery to help male survivors now considered as important. ³ It is seen that men are more likely to be the aggressors and women the victims, earlier research-

How to cite this article: Patil A, Parashar A, Himanshi, Shreshta R. Adult Male Victims of Rape: Need of Legal Recognition in India. J For Med Sci Law 2020;29(2):50-56.

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ers were not able to capture the full range of sexual violence by viewing men as only perpetrators and women as only victims.⁴⁻⁵

The Indian Society has achieved significant success in accomplishing equal rights for all, irrespective of sex and race. One such short coming in dispensation of equal rights in the current scenario is un-recognition of "Rape of adult male", a crime penalized in other developed countries through their legal provisions. If victim of sexual assault is major male the legal help is limited, and the situation becomes worst if the assailant is a female. While sexual assault in minor children (male and female) is well covered in gender neutral POCSO Act, 2012 (The Protection of Children from Sexual Offences Act 2012),⁶ the Indian rape law covering only female victims has left some adult male victims in grey zone of Indian law.

This review paper is an attempt to overview academic literature on adult male survivors of sexual violence where they are acknowledged and provided with legal and remedial services. The Indian legal definition of rape is critically discussed in comparison with legislation of other developed countries where the offence of rape is gender neutral in legal eyes.

2. Prevalence

Early research has reported that approximately 3 to 8% of American and British men report of having experienced an adulthood incident of sexual assault in their lifetime⁷⁻¹⁰ and between 5 to 10% of rape victims were male.¹¹⁻¹³ These rates may underestimate the magnitude of the problem of male rape given that men are often unwilling to report sexual assault experiences.¹⁴⁻¹⁶

According to The National Intimate Partner and Sexual Violence Survey (NIPSV) 2010 Summary Report, approximately 1 in 71 men in the United States (1.4%) reported having been raped in his lifetime.¹⁷ Among these victims, 4.8% of men reported that they were forced into penetrating someone else at some point in their lives. Since such male victims rarely report the incidence, the actual number of male victims of sexual violence is likely to be much higher. Similarly, NIPSV survey done in 2014 reveals that; approximately 1 in 15 men (6.7%) reported that they were made to penetrate someone else during their lifetime.¹⁸ However, in a

study of the United Nations, found that 3% of Chinese men who were surveyed, acknowledged having been raped by another man during their lifetime. This suggested that the proportion of male rapes as a percentage of all rapes was 14.4%.¹⁹

Recently, the Delhi based Centre of Civil Society found that approximately 18% of Indian adult men surveyed reported being forced to have sex, of which 16% claimed female perpetrators and 2% claimed male perpetrators.²⁰ Although studying male sexual assault is an important issue, it has largely been "overlooked", dismissed, or ignored and is an understudied issue.²¹⁻²³ Few case examples from India are mentioned below for better illustrations of the existence of the offence of male rape.

Case 1²⁴

A Tihar Jail inmate was sentenced to 2.5 Years in Jail for Sodomising his Co-prisoner. Metropolitan magistrate sentenced the accused after convicting him under S. 377 (unnatural sex) of the IPC and sentenced him to the period already spent by him in jail during the trial of the case in 2017. Here the difference in quantum of punishment for the same kind of crime is clearly visible, only because of the victim's gender.

Case 2²⁵

In June 2019, Amboli police arrested a 42-year-old man as he had allegedly forcefully performed unnatural sex on a 37-year-old manager of an Andheri based advertisement firm, while his associate absconded. As per the police, the victim met the two accused in a bar who then invited him to their flat in a nearby building under the pretext of getting another drink. Further the complainant narrated that he was offered a cigarette after which he felt heavily intoxicated thereby the accused taking advantage of this conditions forcefully performed unnatural sex on him. After that the victim left the flat and narrated this ordeal to his friend who then advised him to approach the police. The medical examination of the victim confirmed sexual assault on him.

The above sited examples are enough to point out that male victim of sexual assault is a reality and the victims of such crime are denied of due justice if they are "a major male". The faulty assertion that male victimization is uncommon has also been used to justify the exclusion of men and

boys from recognition thereby fueling isolation and underreporting.

3. Legal position of world on male rape

The FBI's (Federal Bureau of Investigation) Uniform Crime Report of 2012, modified the definition of rape and redefined to include penetration of vagina or anus however slight with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim.²⁶ Thus, for the first time this definition identifies rape as an offence which includes any gender of victim and offender. Additionally, the United States law now recognizes that rape with an object can be as serious and traumatic as non-consensual penile penetration.²⁷

The earlier English law did not recognize male rape as a criminal offence and recorded such acts as non-consensual buggery. This however changed with time and amendments in the English law. The Criminal Justice and Public Order Act, 1994 was the first Act to recognize that male can be a victim of rape. The section 142 of the act says that it is an offence for a man to rape a woman or another man thereby recognizing male victims. Further, as per the Sexual Offences Act 2003, a person commits an offence of rape if he intentionally penetrates the vagina, anus or mouth of another person with his penis. Additionally, the Sexual Offences (Scotland) Act 2009 and the Sexual Offences (Northern Ireland) Order 2008 recognized men, can be both perpetrators and victims.²⁸

The Republic of South Africa (Criminal Law Amendment Act 2007) too have recognized this problem and have amended their laws of rape to address female and male victims alike.²⁹ The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 defines rape as any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape. Further this amendment has defined sexual penetration but has retained its gender-neutral nature.

The French Penal Code defines rape as "any act of sexual penetration, whatever its nature, committed against another person or on the perpetrator, by violence, constraint, threat or surprise, is a rape", thus terming it as a gender-neutral crime.³⁰ Philippines is a country which

recognizes that both male and female can be a victim of rape, but the punishment is different, in case of female victim it is life imprisonment while in case of male victim it is 6 to 12 years.³¹

4. Understanding definition of rape

Medically, male rape is defined in the Segen's Medical Dictionary as "male rape usually refers to sexual violation of a man by another man through a forced anal intercourse, either during incarceration or in aberrant socioeconomic settings" a penetrative sexual act (forced anal intercourse) committed by a male or female in which the victim is unable or unwilling to give uncoerced consent".³² The World Health Organization (WHO) and United States government have recently redefined rape for the inclusiveness of both genders. WHO defines sexual violence which includes rape "as the physically forced or otherwise coerced penetration-even if slight-of the vulva or anus, using a penis, other body parts or an object by male or female".³³ While as per the FBI's updated definition, rape includes penetration however slight of the vagina or any body part or object, oral penetration by a sex organ of another, without the consent of the victim (The US Department of Justice Archives 2012).

The above definition of rape is emphatically gender neutral thereby recognizing the fact that such offence can be committed on both male and female. It also mentions that forced or coerced penetration need not be always by a sex organ but can also be done by any body part or object into the vagina, vulva, mouth, or anus of another person.

While the Indian law defines rape under section 375 IPC³⁴ as, "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 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, under the circumstances falling under any of the seven descriptions.

International laws have evolved from viewing rape as just a penile-vaginal to penile-orifice and then to penetrative-orifice, all in a non-consensual manner. Considering this insertion of penis or object/part of any body by a man into the anus or mouth of woman also qualifies as offence of rape. Thus, from the Indian legal perspective, rape is something that only a man can do to a woman and thus ignores the fact that even a male can be subjected to this offence and be a victim of such crime. Also, it does not acknowledge the fact that there could be female perpetrator to this crime.

5. Is rape on adult male different from female?

We fail to understand how the impact of sexual violence on men can be different from women though they may indeed experience it differently. Categorizing the forms of sexual victimization that men typically experience as different and lesser than the forms of victimization that women typically experience would require considered justification.³⁵ We propose the following may be considered as elements central to the offence of rape:

1. Violation of autonomy of one's body
2. Non-consensual and forcible sexual penetration by sex organ/object

The main essence of the offence is violation of autonomy of one's body which every person being individual enjoys over his/her own body and that includes sexual satisfaction and sexual orientation. The offence of rape violates this basic right of sexual autonomy subjecting the victim to humiliation and traumatic experience which may last for decades. We believe that bodily autonomy is individualistic and matter of choice and is a part of dignity. Violation of bodily autonomy with forcible penetration either with sex organs or by other objects leads to psychological trauma and many times physical injuries which may be so severe that the victim may suffer from permanent vegetative state or may die from the consequences of such injuries.

Sexual offence of rape on a woman usually fulfill the above elements of rape and thus satisfies the legal requirement for law enforcing agency to investigate and prosecute the offence. The same holds true for rape on males or transgender victims who are sodomized or subjected to anal

penetration. But in absence of gender-neutral nature of Indian rape law such offence will be fall outside the ambit of stricter sec 375 IPC in comparison to section 377 IPC when punishments are concerned.

6. Legal remedy for male victim/survivor of sexual assault as per current Indian Law

There are certain scenarios which demonstrates how a male victim is at the mercy of interpretation of Indian laws such as:

1. If a male is sexually assaulted by a male, it is covered under IPC section 377 and if he is assaulted by a female there is no specific legal section dealing with the crime.
2. Insertion of foreign object into the anus/urethra/vagina of female without consent is considered rape as per 375 IPC but there is no legal provision for such offence if done on male except grievous hurt or physical assault.
3. Sexual offence on 3rd gender/transgender is again an ambiguous topic and possibly punishable under section 377 IPC.

Considering a situation where an adult male is subjected to sexual assault, the perpetrators of such crime may be prosecuted only under section 377 of IPC and nothing else. Section 377 IPC says "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be also be liable to fine".³⁶ But this legal provision inherently lacks from the following:

1. No clarity on the term carnal intercourse.
2. It does not consider act done with common intention by more than one offender like gang rape.
3. It does not consider the clause of penile-orifice and penetrative-orifice.
4. No provision of punishment for statutory rape, repeat offenders and for severe punishment if the victim dies or suffers from persistent vegetative state.
5. There is no penal provision of life imprisonment or death.

Section 377 IPC provides punishment for the offence of carnal intercourse against the order of the nature where it does not consider insertion of foreign object or part of the body into the anus of male as a form of sexual assault whether natural or

unnatural similar to the clauses mentioned in section 375 IPC.

The maximum punishment of imprisonment for ten years under section 377 IPC may not be enough if the victim suffers from death or remains in permanent vegetative state due to such offensive act. The physical and psychological trauma suffered by a male victim of such crime is nevertheless less criminal than the offence of rape committed on a woman.

Recently in December of 2018 Delhi HC passed a judgement making IPC Sec 354 A gender-neutral by which sexual harassment of 3rd genders were covered and made punishable under 354 A IPC.³⁷ Moreover, a transgender is neither a male or female and are used as a passive agent in sodomy, and no legal remedy exist for non-consensual sexual assault in such victims. On the contrary, whether sexual assault on them will fall under 375 or 377 of IPC is not clear.

7. Recent developments of acknowledgement

Rape of males in India is very often not reported due to obvious cultural reasons, even if some survivor manages to report the crime, the legal system lacks in law for acknowledging it and providing strict punishment. The law does not always acknowledge these experiences and perpetuates myths such as “men cannot be raped”, “male victims are not affected by rape”, and “male rape is not important”. Addressing to this scenario, individuals like Jai Vipra at New Delhi, Think-tank Centre of Civil Society, argues that the phrasing of rape law should be gender neutral.³⁸ As section 375 of Indian Penal Code states, rape is something a man can do to a woman it does not acknowledge the fact that even males can be raped and there may be female perpetrators of such crime. Though, sexual assault on child survivors of both sexes are covered by POCSO Act 2012, but the segment of adult male victims is left out in open for variable interpretation. The provision of section 114 A of Indian Evidence Act [IEA] available to female victim of rape is not granted or applicable to the victim of section 377 IPC.³⁹

After the Nirbhaya incident, male rape survivors also began to voice their ordeal, including one Chennai based man who posted a blog about his memories of being raped which went viral overnight. In 2013, Centre passed its stop-gap Criminal Law (Amendment) Ordinance which

substituted “sexual assault” for “rape”, thus making the crime gender neutral from both perpetrator and victim aspect thus removing the gender bias word “rape”. This move of government was opposed by some human rights advocates and women right activists. These group argued that rape was explicitly patriarchal crime directly uprising from abuse of male power and privilege thus resulting in the fall of ordinance Centre for Civil Society 2014). It could be argued that making the offence of rape gender-neutral will not dilute the seriousness of the crime nor its prosecution. Rather its scope of applicability will widen by including and recognizing male and transgender victims of such crime.

8. Conclusions

We presume that the crime of sexual assault may have its origin from the abuse of power in patriarchal society, but the suffering of the victim does not depend upon the biological sex. As much as the offence of rape is concerned the victims of either sex are traumatized for their rest of life and will suffer through worst ordeal. The various statistical data on world’s prevalence of male victim, it is confirmed that male rape is no figment of imagination. If we can make sexual assault on minor’s gender neutral, why not the Indian rape laws be on similar stands. Replacing the term “rape” with “sexual assault” in the definition is a way which may solve the problem of gender bias like POCSO Act.

For a moment considering females suffer more than males as a victim, it could be argued that the punishment should be based on sameness of crime and not on sameness of effect, to ensure equality before law. Gender of perpetrator should not matter, however low the percentage of major male victim is, in a country with 133 crore population, even that percentage does matters.

We admit that sexual victimization poses a great threat for women and girls but there is vast cohort of male victims who have been overlooked in research, media, and governmental responses. To better capture the forms of sexual victimization, a gender-conscious analysis studies of sexual victimization is needed that facilitate disclosure and reporting of adult male sexual assault.

Since most of the international laws recognize male sexual victimization through their gender inclusive rape laws, Indian rape law also needs to be

amended to penalize rape on adult male with prosecutory provisions and rehabilitative reforms. In fact, the gender bias in legal definition of rape may indirectly contribute to the relative paucity of research on male victims of sexual assault and researchers relying on legal definitions may operationally define rape in such a way that it excludes male victims.⁴⁰ Therefore, it is necessary to bring full attention to the definitions, categories, type of sexual victimization that should be revised to eliminate gendered and heterosexual bias.

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