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DOES INDIA HAVE ADEQUATE GENDER-NEUTRAL LAWS AGAINST COITAL OFFENCES?

AUTHORED BY - YASH BHARDWAJ

ABSTRACT

This article presents a three-step approach to discussing the adequacy of Indian laws against coital or sexual offenses. First, we will attempt to understand the complexity of the offenses related to coital or sexual acts. Next, we will examine Indian laws that prohibit sexual offenses. Finally, we will address the question of whether Indian laws are sufficient, competent, and gender-neutral.

Keywords: Coital, Sexual, Penetration, rape, sexual offences, assault.

INTRODUCTION

“Equality is not a concept. It’s not something we should be striving for. It’s a necessity. Equality is like gravity. We need it to stand on this Earth as men and women.”

– Joss Whedon

This famous quote of Joss Whedon concludes the whole concept of the justice if combined with another splendid quote of Martin Luther King Jr. that is-

“Injustice anywhere is a threat to justice everywhere.”

It is not a shrouded fact that Indian legislations for women safety are not up to their objectives for what they have incepted in the society. There is no doubt about it that there is still a lot of vacuums that can be filled in this regard. But if we think solemnly about the other side of this coin, it is nothing but emptiness.

What about sexual offences against men? Is there no such crime in India and if there is, is there adequate law for it or even any law?

Before understanding this issue, we should comprehend the true definition of sexual offences.

SEXUAL OFFENCES: MEANING AND NATURE

In a layman's language, it could be described briefly as offences of sexual or coital nature. But in a more elaborated way, it could be defined as *“any unwanted sexual activity on a physical, intellectual, or mental level of consciousness that results in the invasion of someone's privacy, the suppression of their will, the infliction of pain, or the victim feeling harassed is considered a sexual offense.”*

Common crimes in this category include: Rape, Assault by penetration, Sexual assault et cetera. Now if we just peek at the three crimes mentioned above, apart from savagery and cruelty, another thing that comes to mind is a woman. But is the offence of sexual nature only limited to women?

The answer to this question is a big no. There is a big statistical figure of sexual offences against man or a transgender or any other gender, not just in India but in the whole world. In India, only women are recognized by law as the victims of sexual violence, and only men are recognized by law as the offenders. The Indian Penal Code, 1860, does not consider cases in which a man is the victim to be crimes.

Sexual harassment is not inherently linked to any particular gender. The fundamental ideal of "Equality of status and of opportunity" and the objective of achieving social justice, which is enshrined in the Preamble of the Indian Constitution, are opposed by sexual harassment and abuse. Article 14 of the Indian Constitution guarantees equality before the law and equal protection under the law, both of which are violated by sexual harassment.

INDIA'S LEGAL FRAMEWORK ON SEXUAL OFFENSES

The POCSO Act of 2012, which equally criminalizes and punishes the conduct of adult perpetrators in cases of sexual offenses committed against children, is one of India's gender-neutral laws in effect. This law only punishes adult sexual offenses against minors, regardless of the gender of the perpetrators or the children who are the victims. Since the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) only covers acts of sexual violence committed by adults against children under the age of eighteen, there is no legal right or recourse available, particularly for the male gender, above the age of eighteen. The majority of criminal laws in India pertaining to sexual abuse and harassment are the root of the issue.

In India, the law only protects women against sexual harassment and rape. Men and other

genders are not shielded from the vicious acts of sexual harassment or rape by laws or statutes.

Section 377 of The Indian Penal Code, 1860 is the only section of Indian law that addresses "sodomy." The other sections are designed with women in mind. It is important to remember that, in contrast to Sections 354A to 354D and Section 375 of The Indian Penal Code, which specify that only men may commit acts of sexual violence, both the perpetrator and the victim can be any gender.

However, a number of gaps in the IPC prevented the child from being adequately protected, including:

- IPC 375 does not protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty", it is a compoundable offense with a meek penalty. Furthermore, a male child's "modesty" is not protected.
- IPC 377 does not define the term "unnatural offences". It is not intended to make child sexual abuse of any kind a crime; rather, it only pertains to victims who have been sexually assaulted by their attacker.

On December 12, 2023, the Bhartiya Nyaya Sanhita (BNS) Bill, 2023, which was intended to replace the Indian Penal Code (IPC), was reintroduced in Parliament, sparking discussion about whether or not Section 377 should be left out.

The Section makes sexual offenses against animals and non-consensual sex between adults of all genders and orientations illegal. A Parliamentary Committee recommended that these provisions be kept in place, but the new Bill removes them, making it illegal to rape men, transgender people, or animals.

Senior lawyer and activist Vrinda Grover pointed out that if Section 377 is eliminated, there will be a legal void regarding adult males' and transgender people's protection against sexual assault. Everyone who is sexually abused is protected by the POCSO Act until they turn eighteen. The Transgender Protection Act also addresses violence against transgender people's bodies, albeit it does so very gently. She told TNM that men and transgender people have no legal way to fight sexual abuse because there is no law that addresses it. Activist and attorney Aravind Narrain said that although the new Bill does not necessarily need to retain

Section 377, it does need to include a new clause that makes sexual offenses against men and transgender people illegal.

“The present rape laws only cover rape against women. The aim is to cover this gap and make rape against all persons an offence. Therefore, a new provision criminalising rape against all persons, not just women, must be brought in. This would cover everyone who faces sexual violence,” Aravind told TNM.

DOMESTIC VIOLENCE AGAINST MEN

Domestic Violence Against Men, is a phrase which we don't get to hear every day, not in the newspapers, not in any case studies, in editorials column, or in the voices of protesting crowds. It is a topic of concern that receives less attention and research.

According to a 2019 study, roughly 52% of men say they have at some point in their lives experienced violence from an intimate partner or spouse. According to a pan-Indian study, 98% of Indian men had experienced domestic abuse at least once in their lives.

We are shaped to think that the society is patriarchal in its every dimension, so sometimes we do overlook that a man could also be a victim of domestic violence. Furthermore, our initial reaction when we hear terms like "violence" or "abuse" is to assume that men are the perpetrators and women are the victims. In order to dispel this myth, it's critical to acknowledge that men can also experience abuse and violence.

COMPARATIVE DATA FROM VARIOUS COUNTRIES

In the US, 1 in 9 men report having been the victim of domestic abuse by their spouses or intimate partners. One in seven men report having experienced physical abuse at the hands of their spouses or other close partners.

Men make up two out of every five victims of domestic abuse in the United

Kingdom. This disproves the widespread notion that domestic abuse exclusively affects women.

Forty percent of victims of domestic violence were men between 2004–2005 and 2008–2009,

according to the British Crime Survey. Recently, it has reduced to 37.7%.

STATICAL FIGURES OF CASES OF SEXUAL OFFENCES AGAINST MEN IN INDIA

Because of prevailing stereotypes about masculinity and a fear of social rejection, men who have experienced sexual violence may feel similar emotions to other survivors, these feelings are frequently dismissed. Men often keep quiet about injustices they experience out of fear of being ridiculed, jeered, or insulted by those around them.

There is an abundant amount of research and data in regards with women, but the same for men is so much less and irrelevant. It seems like that if the society has forgiven a gender in efforts of protecting the other.

An Investigation into Gender-Based Violence Against Men in Rural Haryana, India: a multi sectional report

A modified conflict tactics scale was used to conduct in-depth interviews with one thousand married men in the age range of 21 to 49 years old as part of a community-based, cross-sectional study employing multistage random sampling.

The objective of this study is “to find the prevalence, characteristics, and sociodemographic correlates of gender-based violence against men.”

Gender-based violence was reported by 52.4% of men in the current study. Of the 1000 men surveyed, 51.5% had at least one violent incident involving their wives or intimate partners throughout their lives, and 10.5% had experienced it in the previous 12 months. Emotional abuse accounted for 51.6% of all spousal violence cases, with physical abuse coming in second at 6%. Physical assaults were severe only in 10% of cases.

In India, there is no gender symmetry when it comes to physical violence. Risk factors included lower family income, education up to middle class, nuclear family structure, and an intoxicated perpetrator. A spouse who earns a living and has completed their education is at risk for both types of physical violence.

In their lifetimes, 1 in 33 men have been the victim of an attempted or actual rape; 75% of these

incidents happened before the men were 18 and 48% before the men were 12 years old (**Tjaden & Thoennes, 2000**).

By the age of 18, 1 in 4 girls and 1 in 6 boys will have experienced sexual assault (**Finkelhor, Hotaling, Lewis & Smith, 1990**).

The Centres for Disease Control and Prevention (CDC) has reported that: approximately 1 in 38 males have been the victim of completed or attempted rape at some point in their lives; approximately 1 in 4 male rape victims experienced it for the first time between the ages of 11 and 17; approximately 1 in 4 male rape victims reported that it happened before the age of 10.

In a 2010–2012 study, the US Centers for Disease Control and Prevention (CDC) discovered that 1 in 17 men had experienced forced penetration at some point in their lives. 13.5 percent of male victims who were forced to be penetrated and raped stated that the perpetrators were female.

"Even in terms of suicide, men commit suicide at a higher rate than women."

In State of Punjab vs. Ramdev Singh

Rape is a crime against society as a whole, not just against the person of a woman, as the Hon'ble Supreme Court acknowledged. The Indian Constitution's Article 21 guarantees the most cherished fundamental rights to life and personal liberty, both of which are violated by rape, which has been declared a crime against basic human rights.

Therefore, it can be said that the Supreme Court eliminated the idea that only women could be the victims of such crimes and instead recognized that rape is a gender-neutral crime that can be committed by anyone of any gender against any other gender.

Sodomy case of Muzaffarnagar

In Muzaffarnagar, there was a case of sodomy, which is the only act protected by Section 377 against male-on-male rape. A young person in his Muzaffarnagar district sexually assaulted a ten-year-old boy. The minor was taken to a remote location by the accused, who then allegedly sexually assaulted him. After he made it home, the boy told his parents about his ordeal.

The young victim is receiving medical attention at the hospital, but the accused is escaping.

The boy who was sodomized has not received any justice from the police, and the perpetrator is still at large.

There are many unfolded cases of male as victim of sexual offences but the harsh reality of this issue is that you have to research hard for the same. The men cases are not easily be found on the front pages of newspapers, or any protests' slogans.

CONCLUSION

Men are raped in India on a daily basis; it is time for the populace to accept this reality, assist male victims of sexual assault in reporting their stories, and ensure that those who commit acts of sexual violence, whether they are committed by men or women, face the same legal penalties for this heinous crime.

The proportion of male suicide victims is higher than that of female victims. In actuality, Indian married men have a suicide risk that is twice as high.

At some point in their lives, nearly 1 in 5 women (18.3%) and 1 in 71 men (1.4%) experienced forced sexual penetration, whether it was through full forced penetration, partial forced penetration, or penetration aided by drugs or alcohol.

Now, while the 18.3% figure is extremely concerning, what about the other 1.4%? Although it only represents 1% of the total, that 1.4% is made up of lakhs of male victims.

When injustice is done to women, people speak up, so why isn't the same the case when a man is the victim? The law should treat everyone equally, and bias should not be tolerated in the name of gender equality.

This biasness will not advance the true interests of all people, regardless of their gender, race, caste, sex, place of birth, or place of residence, among other factors.

A holistic society must have a broad perspective and value the variety of elements that make up the community.

“This question should be bothering each and everyone of us that where would men go to seek justice if the justice couldn't see the cause.”

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