



NEED FOR GENDER – NEUTRALITY IN INDIAN RAPE LAW

□ Tejaswi Avhad*
Dr. Samraggi Chakraborty**

ABSTRACT

India has ratified The Convention on the Elimination of all forms of discrimination against women (CEDAW) and based on which Parliament has enacted law for protection of women from sexual offences. Meanwhile sexual violence against male continues to flourish. Gender neutral law are those law which gives justice to the victim irrespective of his gender and if we think reverse than it punishes the perpetrator irrespective of his gender. The definition of Rape under Indian Penal Code 1860 has been amended several times from its inception following the paradigm of male being the perpetrator and female the victim. The researcher wants to explore various issues with the scope of gender-neutral rape laws based on previous literatures. To make an objective inquiry into the lacunae in the existing Criminal law in India. It shall be based on arguments of States obligation of non-discrimination on the ground of sex. Discrimination is converse of democracy, by assuming gender neutral law may harm the society we are doing injustice to the sanctity of body of any person who does not fit in the present rigid definition of rape. Feminist scholars like Laxmi Murthy acknowledged that “Men too can be sexually assaulted by men as well by women in rare cases and that women too can be perpetrators”. We are in need to develop egalitarian society so that men who are sexually assaulted will get equal protection as female victims and women who are perpetrators will be liable for conviction.

Keywords: *egalitarian society, female perpetrator, gender-neutrality, non-discrimination, male victims.*

All human beings are potential rape victims. Spouses are raped. Male and female children are raped. Babies are raped. Physically handicapped persons are raped. Mothers, fathers, brothers, and sisters are raped. Adolescents rapes one another as well as older person and children. Male and female prisoners rape each other. During wars soldiers are known to rape the entire communities. Male rapes females and male. Females rape other females and males. No person is immune from the human potential to rape or be raped.

McMullen (Abdulla,2008)

Introduction:

The first thought when pondering about rape is the brutal crime against women which not only

pulls down her prestige but also traumatizes her. Over a period, the Parliament has focused on women protection from sexual violence, CEDAW is a classic example of this. Simultaneously the problem of sexual offences against male at different institutions like prison, juvenile detention center, during war time was flourishing quietly. The Indian legal framework has neglected the notion of male rape, it is treated as anti-feminist. The notion of male rape goes against the notion of masculinity. This is the area which is been neglected and treated as myth. When we talk about rape, male is always considered as perpetrator and female as victim, the time has now emerged to change this paradigm. ‘Real man’ is treated as strong and therefore cannot be raped, but the fact is that male is vulnerable just like

*Research Scholar (Ph.D.), School of Law, Ajeenkya DY Patil University, Pune

**Assistant Professor, School of Law, Ajeenkya DY Patil University, Pune

females. There are different Men rights movement struggling for gender neutral law. Now the question arises whether gender-specific definition of rape is justified? Should there be a wider definition of rape to include male as victims of this horrifying offence.

Meaning of Gender neutrality of rape law:

It is observed that very little attention is paid to male rape victims and sexual assault during adulthood (Will.S,2011). The problems faced by male victims are like that of female victim, they rarely take help of legal, medical, or mental health assistance. Gender neutrality of rape law means that criminal law should recognize, that both male and female can be victims and perpetrators. The fundamental of gender-neutral rape law is to expand the ambit of definition to include male victims and female perpetrators, then the law will be called as gender neutral. The traditional definition of rape was criticized which resulted into amendment of 2013 which is further discussed. Scholars have also criticized on gender specific definition of rape law in Criminal justice system of India. They emphasized similarity in the physical and psychological trauma caused by non-consensual penetration (Philip.R, 2007). The question which stands in society is whether a male can be raped? The word rape is derived from Latin term 'rapio' which means to seize or to take by force. In India rape is defined in IPC under section 375, this section was amended lastly in 2013 by Criminal Law (Amendment) Act 2013. Traditionally rape was confined to penile-vaginal sexual intercourse. After the crime that was accomplished in moving bus which has shaken the entire country, Parliament passed the Criminal law (Amendment) Act 2013 more popularly known as anti-rape law which came to be enforce on 3rd Feb 2013. The definition of Rape was widened enough to include penetration of penis into vagina, urethra, mouth, or anus of a women. The definition was again made gender specific, so now again the question arouse can a male be raped?

Stumbling blocks faced by male rape victims:

The acts which are punishable under law is crime. Victims of sexual male rape themselves are not ready to accept that they can be rape, if they do

accept then there is no law which will come to rescue them. Such victims first struggle with themselves to conclude that they are raped. Secondly, after the crime is committed, where can they go to report this crime as there is no law in India which recognizes male rape. Indian society is patriarchal in nature, male is treated as strong and ultimately real male cannot be raped. Therefore, not only Judiciary is lacking behind but the approach of society is also pale towards such notion of male rape.

Also, the attitude of police and law enforcement agencies towards male victims are negative, the treatment given to such victims is harsh with no scope for sympathetic approach towards their problem (Philip.R,2008). Though the problem is universal cases of female rape and male rape are mostly unreported. The victims not only go through the trauma of rape but also from the problem of social acceptance of their issues by the law enforcement agencies as well the society. In *People v. Yates* (1995), Supreme Court of New York extended the concept of 'rape trauma syndrome' to cover instances of male rape. Whilst most states in US define rape in gender-neutral language thus recognizing male rape.

The issues related to this area are:

1. Sexual violence against male is a crime, but it is not always recognized by the society and victims.
2. Victims of male sexual abuse do not report crime and therefore it motivates the perpetrators for such crime.
3. Such crime remains undetected, perpetrators unpunished and ultimately perpetrators are free to re-offend.
4. There is lack of emotional support made available at different fronts for such victims unlike female rape victims.
5. Law does not encourage reporting of such crime.
6. There are several reasons why men do not report such crime are complex.

Common myths of male rape:

One of the common myths is blaming themselves for not being able to protect themselves during the time of attack. Male are treated as tough enough to protect themselves, and the blame lives them less likely to seek help from others (Aliraza.J,2016).

Myths of male rape is erection or ejaculation by the victims during sexual assault which gives implied consent or willingness to sexual act. It is being argued that the victim may ejaculate out of anxiety or willingly to make the perpetrator believe that sexual experience is over and to end the sexual assault. Only gay is raped and the perpetrators are also gay is also a myth. Male rape has nothing to with sexual orientation of the victims and the accused. Male rape is not a serious issue or male rape is a homosexual issue.

Now the question is who will rape a male, is it a male or female? There are many western countries who has already recognized that a male can rape a male and therefore their law is also enacted in the same manner. Under UK legislation male is recognized as victim and the perpetrator is also a male. Currently UK is struggling to make law gender-neutral to punish females also as perpetrators (Natasha.M,2018). There are few cases where female is offender in male rape cases, although the fact of its existence cannot be denied, it is documented by Sarrel and Masters, Abdulla Kahn etc.

Position in India:

As mentioned, the definition of rape in India is gender-specific. Law commission of India in its 172nd report submitted in 2000 recommended gender-neutral definition of rape by replacing the term 'rape' with 'sexual assault'. Justice Verma committee was constituted in 2012 to investigate possible amendments in criminal law. It was recommended by the Committee to use the word 'person' instead of 'women' under section 375 to cover all victims of sexual violence. The committee has also reminded that gender-equality and safeguarding of human rights is a Millennium Development Goal under the United Nation

Millennium Declaration. As a result, Criminal Law Ordinance 2013 was passed due to the horrific case of Nirbhaya, which adopted the gender-neutral definition of rape. There were few women organizations who opposed this ordinance and abruptly Criminal Law (Amendment) Act 2013 was passed with the expanded version of gender-specific definition of rape. Writ Petition seeking gender-neutral rape law is filed on behalf of Criminal Justice society of India. The issue was found valid by the Hon'ble CJI and directed petitioner to make representation to the Parliament. A bill was drafted proposing gender-neutral rape law, under the guidance of Mr.KTSTulsi. Looking at the past judicial decisions and legislative amendments it is evident that they have showed least interest in gender neutral rape law. It raises the question of legitimate interest of the stakeholders, as suggestions for amendments is taken into consideration very little. Literature review has notified number of scholars researching on male rape since 1972, in India it was first raised in Sudesh Jhaku v. KC Jhaku (1998). In India instances against the paradigm of male - on - female occurs less frequently. As legislature has nothing to do with the number of victims to get law into existence, as it must be for the better of people. This does not reflect from the definition of rape under IPC which is amended several times. Contouring the definition as male violating women, does injustice to those whose cases does not fit in the given mold. There are multiple limitations, and therefore there is growing need to reconsider the definition of rape from the view of various stakeholders who were not earlier considered. Instead a human rights-based approach should be adopted by the legislature. The object of gender-neutral rape law is not to create disability among women to report rape cases but to make the society aware that men can be raped just like a woman and are vulnerable. There is need to expand the scope of sexual offences to deal with different situations. Looking Indian law in broader view even the Constitutional Law speaks of Equality under Art.14 and non-discrimination under Art 15.

Critics:

Gender neutrality is criticised as coercion mechanism, to divert the scholars and other writers from focusing their attention from female rape victims i.e. shifting their focus from female rape victims. For some, gender neutrality mystifies the crime of rape. It will discourage female rape victims from coming forward as they would be threatened by counter charge. As we all are aware, to prove rape there must be medical and other evidences, how will they be procured in case of male rape victims.

Conclusion:

The purpose of gender-neutral law is not to desexualize rape, but to understand the phenomenon of rape beyond the paradigm of male or female rape. Gender neutrality will not change the attitude and behaviour but it will include male as victims and female as perpetrator. The researcher has not addressed other concerns of victims like the harrowing procedures, corruption involved in investigating machinery etc. The research paper has tried to answer the hypothesis of whether rape should be made gender neutral from prospective of victim and perpetrator. From victims prospective State is under obligation to protect human rights of every citizen from violation without any discrimination based on sex. From perpetrators prospective it is with hope that society will get rid of patriarchal tendencies. The least the State may think of enacting separate gender-neutral offence of sexual offence with like punishments (Harshad.P,2015). This suggestion is based on premises that each distinct class of sexual assault victims in society must be addressed separately.

References:

1. As quoted in Noreen Abdulla Khan (2008), Male rape: The Emergence of Social and Legal Issue, Palgrave Macmillen.
2. AlirazaJavaid(2016), Male Rape, Stereotypes, and Unmet Needs: Hindering Recovery, Perpetuating Silence, Violence and Gender Volume 3, Number 1, 2016
3. (CEDAW) The Convention on Elimination of All Forms of Discrimination against Women, International treaty of United Nation to which India ratified on 9th July 1993.
4. Criminal Law (Amendment) Bill, 2019
5. Justice Verma Committee Report. (2013), PRS Legislative Research.
6. J.N.Pandey, Constitutional Law of India, Central Law Agency,56th Edition.
7. Kaufman, Divasto,Jackson,(1980).Male rape victims: non-institutional assault. Am J Psychiatry.
8. Natasha McKeever (2018), can a woman Rape a man and why does it matter? Springer Link.
9. Philip Rumney(2007), In Defence of Gender Neutrality Within Rape, SEATTLE JOURNAL FOR SOCIAL JUSTICE
10. Phillip N.S. Rumney (2008), Gender Neutrality, Rape and Trial talk, International Journal for Semiotics of law.
11. People v. Yates 637 NYS 2d 625(Sup.1995)
12. Ratanlal&Dhirajlal, The Indian Penal Code, LexisNexis,35th edition.
13. Sudesh Jhaku v. KC Jhaku, 1998 Cri Lj 2428.
14. The Criminal (Amendment) Act 2013, The Gazette of India,2013
15. The Nirbhaya Gang Rape case 2012.

