

GENDER EQUALITY: CONSTITUTIONAL MANDATE WITH REFERENCE TO JUSTICE VERMA COMMITTEE REPORT ON CRIMINAL LAW AMENDMENTS

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Abstract

It has come to the limelight that in about 10% of rape and sexual assault cases that occur, the victims are men. In such cases, the perpetrator could be a man, woman or a transgender. However, this is not recognised by the law, as it exists today, even after the Criminal Law (Amendment) Act, 2013. It typecasts men in the role of the offender and women in the role of the victim. The Justice Verma Committee, which was formed pursuant to the brutal gang rape of a 23-year-old student in Delhi, in its recommendations, has suggested that rape and sexual assault laws should be made gender neutral. All victims whether female or male should get justice under one law and should cover under one law. Because this fight against rape not against human beings.

Keywords: Gender Neutral Sexual assault, Gender free, Justice Verma Committee Report, Criminal Law Amendment Act 2013, The Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966, The International Covenant on Economic, Social and Cultural Rights, 1966.

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Introduction

In India, neither sexual assault nor rape are identified as offences that can be committed against men. In fact, the definition of rape is so narrow that only a man can commit these offences against a woman. A system where one type of rape is given priority over others in the name of protecting women is self-defeating. In India, rape is defined under Section 375 of the Indian Penal Code narrowly, such that only a man can be said to have raped a woman. This does not mean that male and other rapes cannot be prosecuted. But these 'other rapes' are criminalized under Section 377, which unfortunately also brings consensual homosexual sexual activity under its purview.

By analyzing the international scenario and the reasons for this phenomenon, It has come to light that in about 10% of rape and sexual assault cases that occur, the victims are men¹. In such cases, the perpetrator could be a man, woman or a transgender. However, this is not recognised by the law as it exists today, even after the Criminal Law (Amendment) Act, 2013. It typecasts men in the role of the offender and women in the role of the victim. The Justice Verma Committee², which was formed pursuant to the brutal gang rape of a 23-year-old student

in Delhi, in its recommendations, has suggested that rape and sexual assault laws should be made gender neutral. However, ignoring these recommendations and bowing down to the pressure from activists, the Government passed the Act without these much-needed reforms.

International covenants on the rights and JVC report preface

The fundamental right of every person to life with human dignity,³ equality,⁴ are to be made available to every citizen, including men. However, as pointed out earlier, this has not been implemented, as the Government has chosen to ignore the suggestions of the Justice VCR in this regard.⁵ The Committee in its report had categorically stated that, if the human right of freedom means anything, then India couldn't deny its citizens the right to be different. Thus, the right to sexual orientation is a human right guaranteed by the fundamental principles of equality.⁶

The Committee clearly endorsed the rights of homosexuals and transgender, to not be excluded from the purview of the protection against offences such as sexual harassment and sexual assault. Even in light of the recommendations of the Justice Verma Committee and many protests regarding the same, the Criminal Law Amendment Act

¹ Joshita Jothi and Keshavdev J.S., *Rethinking Rape: Should The Law Still Confine To The Paradigm?*, 2(1) *NLUJ Law Review* 56 (2014)

² Verma, Seth and Subramaniam, *supra* note 6, at 57.

³ Article 21, Constitution of India, 1950

⁴ Article 14, Constitution of India, 1950

⁵ Rajalakshmi, *supra* note 7

⁶ Verma, Seth and Subramaniam, *supra* note 6, at 57

2013 still enforces a gender specific approach to the offences of rape and sexual assault.

India is a party to several international covenants on the rights of individuals, such as The Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966 and The International Covenant on Economic, Social and Cultural Rights, 1966, all of which reaffirm the inalienable right of every person to equality and human dignity.⁷ However, India has willfully chosen to disregard its obligations under these Covenants, and has continued to turn a blind eye to the woeful cries of the affected minorities. Committee has discussed the role of education and perception, it has brought to light the various gender stereotypes that are hammered into Indian children at a very young and impressionable age.⁸

These stereotypes play a major role in molding the ideas of men and women in India. As this attitude can be traced as one of the reasons for the increasing incidents of rape of women, it can also be said to be the reason why Indian society is so reluctant to acknowledge the occurrences of male rape. The very notion of the masculinity and the

strength of a man is threatened when he admits to having been raped. This serves as one of the major reasons most male rapes go unreported.

Furthermore, the Committee, in the preface to its report, has also acknowledged that the required changes in the law can be brought about only by a change in the social mind-set and cannot be achieved simply by legal norms. This argument is augmented by the stiff resistance that was put up by feminists and activists alike in condemning these reforms, and insisting that the rape and sexual assault laws remain biased.⁹ The main contention put forward by these groups is that if the rape and sexual assault laws were made gender neutral, this would result in complaints of rape by women being met by counter-claims to build pressure on them to withdraw their complaints. They argued that this would increase the vulnerability of women.¹⁰

The most glaring example of the plight of male rape survivors is that of Vinodhan, a young man from Chennai. In the media frenzy that followed the brutal rape of the 23-year-old in Delhi, Vinodhan was moved to write about his traumatic gang rape incident

⁷ Preamble, Universal Declaration of Human Right, 1948. Gender neutrality in rape law –though adopted in many nations– still is rejected as needless in many others. The issue of male rape or lesbian violence remains a hushed-up secret between victims and perpetrators. The situation in India offers a glaring example

⁸ Verma, Seth and Subramaniam, *supra* note 6, at 383

⁹ TNN, *Activists join chorus against gender neutral rape laws*, THE TIMES OF INDIA, (March 9, 2013), available at [http:// articles. timesofindia. indiatimes. com/2013-03-09/india/37580560_1_gender-human-rights-groups-women-activists](http://articles.timesofindia.indiatimes.com/2013-03-09/india/37580560_1_gender-human-rights-groups-women-activists) (Last visited on August 1, 2013)

¹⁰ *Ibid.*

at the age of 18.¹¹ Many male rape survivors like Vinodhan have silently suffered for many years with no recourse to the law and nowhere to turn to for psychological relief. Several other victims have also come out with their stories such as Krishnan, who was raped in Kerala and was too ashamed to come out in the open.¹²

It is time these victims were given access to justice and a platform to vent their grievances. There have been cases¹³, wherein the squeezing of testicles has been held to be an offence coming under the head of 'grievous hurt' under Section 320 of the Indian Penal Code. The courts have not examined this offence under sexual assault, nor have they explored the possibility of doing so. This is a clear illustration of the huge disparity in analysing rape and sexual assault committed against men as opposed to those committed against women. There is a pressing need to legislate on this aspect, with the judiciary and the general public lending a helping hand in the implementation of the same.

The existing pervasive gender-role stereotypes suggest a notion that males, and the idea of masculinity that they embody, cannot fall victim to an offence of rape or sexual assault. The veracity of this statement

has now had reason to be doubted. The instances of male rape, as enunciated above, give a clear idea regarding its prevalence. However, questions regarding societal recognition and awareness of the same need to be advanced. As already noted, correct labelling of a crime gives the victim a sense of vindication which might encourage him to seek legal or psychological redress.¹⁴

Gender neutrality has vastly been regarded as a coercive mechanism whereby scholars shift the attention from female victims of rape. However, it must be noted that the object of gender neutrality in sexual assault and rape law is very different and has a reasonable, independent standing. A change towards gender neutral laws brings forth the notion that the laws are not analysed in gender specific terms, but rather, gives emphasis to the act, irrespective of the gender of the perpetrator or the victim.

As has been observed previously in this article, the prevalence of such acts has increased considerably and the legislature cannot afford to turn a blind eye to the same. Criminal conduct should be appropriately labelled and legislation regarding the same should be sensitive to the experiences of the victim. Merely because there is a vast disparity between the number of rape and

¹¹ Priya M. Menon, Lacking support, male rape victims remain silent, THE TIMES OF INDIA, (February 6, 2013).

¹² Ibid.

¹³ State Of Karnataka v. Shivalingaiah Alias Handigidda, AIR 1988 SC 115.

¹⁴ Rumney, supra note 33, at 485

sexual assault cases against women as opposed to men and an even bigger disparity between the number of rape or sexual assault cases perpetrated by men as opposed to women, this by itself cannot be reason enough to ignore the problem and treat it as an exception or a mere anomaly. It is a principle of criminal law that the state will protect those individuals who are not able to protect themselves. It is indeed a discrimination that the gender of the victim is a precondition to such protection.

Constitutional mandate and Equality

This brings us to the issue of the right to equality as envisaged under the Indian Constitution and sexual assault. Article 14 guarantees to every person, equality before the law and the equal protection of laws.¹⁵ The expression 'equal protection under the laws' has now come to be read as an obligation on the state to bring about the necessary social changes, so that everyone may enjoy equal protection of the laws.¹⁶ This should be in consonance with the existing needs of society, and ensuring legal redress for instances of same-sex and male rape or sexual assault is the first step in bringing about social changes relevant to address such issues. It is said that the first step to the solution of any problem is in identifying it.

This means that although the issue of sexual assault or rape outside the male-on-female paradigm has been largely overlooked by legislators till date, it is imperative that the flaws of the existing system come to the fore and be recognized. If rape outside the 'typical' definition,¹⁷ must come to be recognized and acknowledged in society, it is crucial that the reporting of such crimes increases substantially. However, with the law remaining as it is, with its gender specific approach, which offers no hope for legal or psychological redress, attracts social stigma, why would persons subjected to this crime want to report it ?

The answer to the problem that this question poses can only be the legal recognition of such offences. Gender specificity in sexual assault law can no longer be said to serve any purpose. The prevalence of rape outside the set paradigm has no reason to be doubted. It is only the development and application of a gender-neutral law that will be effective in improving the reporting of such crimes. The definition of rape must be reconsidered, sexual assault must be classified in accordance with various degrees of harm caused by each, and each must be define in a comprehensive manner.

¹⁵ Supra note 62.

¹⁶ V.N. Shukla, CONSTITUTION OF INDIA, 46 (Mahendra Pal Singh ed.), (Lucknow: Eastern Book Company Publishing, 2008).

¹⁷ Definition of "Rape", Oxford Dictionary U.S.A., available at http://oxforddictionaries.com/definition/american_english/rape (Last visited on August 1, 2013)

Gender neutrality in sexual assault and rape law has long been an issue that legislators have been reluctant to address. However, the pressing need for its acceptance in the law cannot be ignored any longer. The Justice Verma Committee's recommendations indicate the same. Ultimately, it all boils down to a moralistic argument that every person deserves to have their rights protected, and that all persons subjected to the crimes of rape or sexual assault, irrespective of their gender, should have recourse to the law in order to achieve their

well-deserved vindication. Only time will tell whether this will be achieved.

The Indian perspective that this would make women even more vulnerable cannot be accepted as well, as safeguards can be put in place to deter the misuse of such laws. Equality, being a fundamental principle embodied in the Constitution, must be given effect to, in order to ensure justice to all. All victims whether female or male should get justice under one law and should cover under one law. Because this fight against rape not against human beings.