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## SEXUAL VIOLENCE AGAINST MEN IN FAMILY INSTITUTION

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### ABSTRACT

Sexual violence perpetrated by women against men has become a prevalent issue in contemporary times. This encompasses various forms of abuse, such as economic exploitation, physical harm, sexual assault, emotional mistreatment, and psychological abuse, all of which detrimentally impact an individual's mental and physical well-being. In a country like India, men are always seen as dominant figures in life contributing to a closed mindset of society. There are so many stereotypes surrounding them in society. They are always assumed as strong and not vulnerable. Men are commonly viewed as inherently strong and invulnerable, fostering the belief that they cannot be victims of rape or vulnerable to such acts. Society often wrongly associates rape solely with women, perpetuating the misconception that men are immune to such crimes. Another stereotype reinforces the notion that men always desire sex, creating the false belief that any sexual encounter between spouses is consensual and enjoyable. This prevailing mindset discourages open discussions about male victims of rape and sexual violence. Moreover, in this society the expectations of men as unemotional inhibit their ability to openly express their vulnerability, even preventing them from crying openly. Consequently, this prevailing culture makes it challenging for male survivors to speak openly about sexual violence or rape they may have experienced. This article seeks to delve into the experiences of male victims of rape and sexual violence in adulthood, shedding light on a topic often obscured by societal misconceptions.

**Keywords:** Economic exploitation; Psychological Abuse; Sexual violence; Men; Society; India; Stereotypes; Victims; Vulnerable; Rape.

## 1. INTRODUCTION

Every individual has the right to engage in any sexual or intimate relationship willingly, without any force or threat. <sup>1</sup>Sexual violence is characterized by the coercion or manipulation of an individual into participating in undesired sexual activities without their consent. Factors contributing to a lack of consent encompass age, fear, disability, illness, and the potential influence of alcohol or other substances. This form of violence is not limited by age, as it can affect children, teenagers, adults, and the elderly alike. Those who commit sexual abuse can include family members, acquaintances, individuals in positions of trust, or strangers. It is a pervasive issue that can impact anyone, transcending various demographics. Sexual violence comprises acts such as sexual harassment, rape, incest, and sexual abuse.

- Sexual harassment: It is a pervasive issue that involves unwelcome and inappropriate behaviour of a sexual nature. It can manifest through verbal, non-verbal, or physical conduct. It is addressed in Section 354A of the Indian Penal Code.
- Rape: Engaging in sexual intercourse or penetration, which includes the vagina, mouth, or anus of another person, can involve a sex organ, foreign object, or body part, and is considered unlawful if done without the person's consent. This act may occur with or without the use of force. It is addressed in Section 375 and Section 376 of The Indian Penal Code.
- Incest: Incest refers to the act of engaging in sexual relations with whom they are prohibited from marrying. While there is no specific legal prohibition against incestuous relationships, society generally disapproves of such unions. The person may face charges related to rape or sexual assault, but not specifically addressing incest.
- Sexual Abuse: Sexual abuse occurs when one partner compels the other into sexual intercourse or engages in forceful touching or kissing without consent.

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<sup>1</sup>NSVRC. 2010, *What is Sexual Violence?*, 1, [https://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Factsheet\\_What-is-sexual-violence\\_1.pdf](https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_What-is-sexual-violence_1.pdf).

Men, too, can find themselves subjected to sexual violence in a myriad of situations across the globe. A prevalent misconception ingrained in society contends that instances of violation primarily target women within familial settings, attributing it to their perceived inherent vulnerability. However, challenging this misguided belief is essential, as men, too, are vulnerable to sexual violence. It is imperative to acknowledge that the spectrum of victims extends beyond gender stereotypes, emphasizing the importance of recognizing and addressing the diverse experiences of both men and women in the context of sexual violence.

<sup>2</sup>In their study on sexual victimization of men, which they published in the year 2014, they found out that the male victims of sexual abuse were much more than we thought. They analyzed four surveys conducted by the Bureau of Justice Statistics (BJS) and the Centers for Disease Control and Prevention (CDC) on how very often women were committing sexual victimization. Data from the CDC's nationally representative study indicated that within a one-year timeframe, both men and women had an equal likelihood of experiencing nonconsensual sex, with a majority of male victims reporting female perpetrators. Throughout their lives, 79 percent of men were forced to penetrate. These incidents were done by female perpetrators. Similarly, the majority of men who faced sexual coercion and unwanted sexual contact identified female perpetrators.

While cases of men being victims of sexual violence within families are less commonly reported, they do occur. For example, consider a scenario where a man, within the confines of his own home and familial relationships, becomes a victim of sexual abuse by a family member. This could involve instances of unwanted advances, coercion, or non-consensual acts, challenging the prevailing notion that sexual violence predominantly affects women within family settings. Recognizing such cases highlights the importance of acknowledging and addressing the diverse range of experiences related to sexual violence, irrespective of gender.

## 1.1. DEFINITION

While the law provides detailed information about sexual offences, the precise definition

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<sup>2</sup> Lara Stemple and Ilan H. Meyer, *Sexual Victimization by Women Is More Common Than Previously Known*, 29 JSTOR 54, (2018).

remains ambiguous.

### **1.1.1. SEXUAL OFFENCE BY UNICEF**

According to The United Nations Children's Fund (UNICEF),<sup>3</sup> “A sexual offence occurs when your physical body is interfered with in an inappropriate way by another person, that is when a person deliberately touches any part of your body including (by that person's touching) your private parts in a sexual manner or way and/or by sexual intercourse all without your permission or consent.”

### **1.1.2. SEXUAL VIOLENCE BY WHO**

<sup>4</sup>The World Health Organisation (WHO) defines Sexual Violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments/ advances and acts to traffic, or otherwise directed against a person's sexuality, using coercion, threats of harm, or physical force, by any person regardless of relationship to the victim in any setting, including but not limited to home and work.”

### **1.1.3. SEXUAL OFFENCE**

<sup>5</sup>“Sexual offence can be defined as any unwanted sexual activity whether on the physical, intellect or mental degree of consciousness which leads to suppression of the will of the victim by invading personal space where the victim feels coerced or manipulated and which involves the infliction of pain.”

### **1.1.4 SEXUAL ASSAULT IN POCSO ACT, 2012**

Section 7 of The Protection of Children from Sexual Offences Act, 2012 (POCSO) states,

<sup>6</sup>“Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes

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<sup>3</sup>“UNICEF, <https://www.unicef.org/guianasuriname/documents/sexual-offences-act-2010-guyana> (last visited Nov. 28, 2023).

<sup>4</sup> Mr Lov Verma, *Guidelines & Protocols- Medico-legal care for survivors/victims of Sexual Violence*, MOHFW, 17 (2014), <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>.

<sup>5</sup> By, *Sexual Offences under the IPC-Section 375-377*, Legal Service India E-Journal.

<sup>6</sup> The Protection of Children from Sexual Offences Act, 2012, §7, No. 32, Acts of Parliament, 2012 (India).

the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

## 2. SITUATION IN INDIA

<sup>7</sup>In India, numerous studies indicate that both males and females can be victims of sexual violence. However, our society and legal system exhibit discrimination, with numerous laws designed to protect women from such violence, while issues concerning males are often overlooked or not given the attention they deserve. <sup>8</sup> According to the research reports, it is concluded that out of 1000 males, 52.4% of males experienced gender-based violence. Only 0.4% had experienced sexual violence. In one case, the male was physically forced to have sexual intercourse with the female while in the other three cases, the males were forced to perform any sexual act with the female against his wishes. According to the survey conducted by the Centre for Disease Control, 1 in every 17 men is forced to penetrate.

The lower income earned by men, resulting in financial constraints, along with issues such as the wife's anger and alcoholism, contribute to domestic violence by the wife. Additionally, anger issues are a factor in the sexual abuse experienced by males. Due to the traditional inclination of both law and society to favour females as the perceived weaker sex, there are instances where false complaints of sexual abuse or rape are filed against men.

## 3. PROVISIONS RELATED TO SEXUAL VIOLENCE IN INDIA UNDER FAMILY LAW

- According to <sup>9</sup>Section 13 (2) of The Hindu Marriage Act, 1955, a wife may present a petition for dissolution of her marriage by the decree of divorce on certain grounds. Clause (ii) states “that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality”

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<sup>7</sup>Shalini Vasishtha, *An Analytical Study on Sexual Violence and Domestic Violence Committed against Males*, SSRN, (2020).

<sup>8</sup> Jagbir Singh Malik and Anuradha Nadda, *A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India*, 44 IJCM 35-38, (2019).

<sup>9</sup> The Hindu Marriage Act, 1955, §13(2), No. 25, Acts of Parliament, 1955 (India).

- <sup>10</sup>The Divorce Act, 1869, applies to persons who profess Christian religion. Section 10 (2) states that “A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.”

In both provisions, it is explicitly mentioned that only a wife has the right to file a petition in the case of rape, sodomy, or bestiality. However, the question arises as to why the husband is not afforded the same privilege to file for the dissolution of marriage on these grounds. In divorce and child custody laws, women are often viewed with greater sympathy and perceived as victims. This sentiment extends to post-divorce maintenance as well. There is a rising trend in the number of false allegations against men concerning rape and sexual harassment.

### 3.1. OTHER PROVISIONS

<sup>11</sup>Men's rights activists argue that anti-dowry laws are often misused to harass and extort husbands. These activists attribute the high suicide rate among married men in India to harassment under these laws. The criminalization of the practice of giving dowry began in 1961 with the Dowry Prohibition Act, 1961 and in 1983, Section 498A of the Indian Penal Code was introduced.

- <sup>12</sup>Section 498A of The Indian Penal Code which deals with cruelty to a wife states that “Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit

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<sup>10</sup> The Divorce Act, 1869, §10(2), No. 4, Acts of Parliament, 1869 (India).

<sup>11</sup>Harshni Slathia, *Men-Victim Of Sexual Assault*, Legal Service India E-Journal.

<sup>12</sup>The Indian Penal Code, 1860, §489A, No. 45, Acts of Parliament, 1860 (India).

suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

- <sup>13</sup>Section 376B of The Indian Penal Code which deals with the Sexual intercourse of husband upon his wife during judicial separation states that, “Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.”

These provisions offer protection to women, but they do not explicitly mention men if these offences occur against them. It penalises only the offences committed against women. They think that men cannot be a victim.

#### 4. INTERNATIONAL SCENARIO

The issue of violence against males is a cause for concern not only in India but also in various other countries. They have taken some measures to protect male victims.

- <sup>14</sup>In the United States, the laws relating to rape are redefined by the FBI’s Uniform Crime Report. They have included forcible anal or oral penetration concerning rape. The previous definition was limited to rape involving females exclusively. The new definition

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<sup>13</sup>The Indian Penal Code, 1860, §376B, No. 45, Acts of Parliament, 1860 (India).

<sup>14</sup> Prachi Chaudhary, *Rape Against Men by Women*, Law Essentials (Mar. 1, 2022), <https://lawessential.com/criminal-law/f/rape-against-men-by-women>.

encompasses a broader range of sexual abuse against men.<sup>15</sup> According to the CDC, “one in seven men age 18+ in the U.S. has been the victim of severe physical violence by an intimate partner in his lifetime. One in 10 men has experienced rape, physical violence, or stalking by an intimate partner. In 2013, 13% of documented contacts to The Hotline identified themselves as male victims.”

- In Scotland, a significant change was observed in the "Sexual Offences (Scotland) Act, 2009," wherein the gender-specific term "women" was replaced with "person" to broaden the definition and include male victims.
- In 2003, Northern Ireland amended its laws with the "Criminal Justice (Northern Ireland) Order, 2003" to ensure justice for male victims of rape, making the law gender-neutral. Subsequently, the "Sexual Offences (Northern Ireland) Order, 2008" expanded this definition to encompass oral rape.
- In the United Kingdom,<sup>16</sup> there is a case where Tanya Lord engaged in sexual activity with a sleeping man and has been sentenced to four years in prison after pleading guilty to the crime. Alongside the four-year sentence, Judge Lynch also issued a seven-year Sexual Offences Prevention Order. The judge cautioned the offender that violating any of the three conditions would constitute a criminal offense, potentially leading to a jail sentence. “Judge Lynch said if the myth about male victims needs to be disabused, it can be disabused now by the contents of the victim impact statement I have just read out” and warning that “there’s no distinction between male and female rape - the fact that a male is the victim doesn’t make it any less serious than the rape of a female victim.”

In countries such as Singapore and Indonesia, there has been no progress in the legal framework for male victims of rape. The definitions in these countries still primarily favour females, mirroring the situation in India. The social acceptance of males as victims is not widely adopted

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<sup>15</sup>National Domestic Violence Hotline, <https://www.thehotline.org/resources/men-can-be-victims-of-abuse-too/> (last visited Nov. 28, 2023)

<sup>16</sup> Sunday World, <https://www.sundayworld.com/crime/courts/exposed-face-of-co-armagh-woman-41-jailed-for-raping-sleeping-man/181954807.html> (last visited Nov. 28, 2023)

in these nations.

## 5. RECOMMENDATION

- Men, too need help in a crisis and when they are experiencing sexual violence, especially by a spouse. The laws and legislation must include sexual violence against men as a punishable offence.
- The man should have the right to file a petition for dissolution of his marriage by the decree of divorce on the grounds of sexual violence.
- The laws should not be gender-biased regarding sexual violence.
- Taking the example of the neighbouring countries, India should also act quickly to amend its law for the protection of men as well.
- The Indian Penal Code of 1860 penalises the offenders for committing sexual violence against women. The Legislation should make gender-neutral laws regarding rape and sexual offences in The Indian Penal Code and other Criminal laws.

## 6. CONCLUSION

In India,<sup>17</sup> Article 14 of the Constitution of India, 1950 states that, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” This article emphasizes the principle of equality and prohibits discrimination by the state. It ensures that all individuals, whether citizens or foreigners are treated equally by the law. Even though there is a fundamental right to be treated equally, we still talk about equality in some cases. In certain cases, males get more importance than females and in some cases, females get more importance than males. But when we talk about sexual violence in India, the laws for women are major. There is not even a law which protects the males in these situations. The laws must include words such as person instead of male or female because sexual violence can happen against anyone. Through my paper, I have concluded that men also have the right

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<sup>17</sup> INDIA CONST. art. 14.

to be protected and to petition for dissolution of marriage by the decree of divorce. There are not many cases reported regarding this matter, because when he speaks on this, he becomes a joke for many people. When women face these kinds of acts of violence, many come for support but it is not in the case of males. It has become a crucial time when there is an urgent need for laws for the protection of male victims.

Both men and women should receive equal protection in these situations. The misconception that men don't experience harm must be dispelled. There is a requirement for appropriate laws to safeguard men from sexual violence, and our society's mindset needs to evolve. If we genuinely advocate for equality in our country, it is crucial to ensure parity in every aspect.