

**INSAAF KA ADHURA SAFAR: THE UNFINISHED ODYSSEY OF JUSTICE IN
INDIA'S JUDICIAL WAR ON SEXUAL VIOLENCE - NAVIGATING THE
COMPLEX LANDSCAPE OF GENDER JUSTICE IN CONTEMPORARY INDIA**

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ABSTRACT

This paper examines the critical issue of sexual violence against men in India, showing that there is no legal framework and gender-neutral laws are urgently required. Even after new measures, Indian law still ignores male victims of sexual violence, thus continuing the culture of silence and stigma. The study's objectives are to determine the extent to which sexual violence exists among males, look at prevailing policies and come up with proposals for comprehensive policies that include all genders. This research uses a mixed methods approach drawing from both quantitative data obtained from available crime statistics and qualitative information obtained from semi-structured interviews with legal experts who have experience in handling such cases. A comprehensive review of prior literature and legal documents further enlightens the study. In conclusion, the study emphasizes the importance of critical re-evaluation of the Indian legal system to establish gender-neutral laws that ensure protection for the victims of sexual violence. The purpose of the study is to analyze the scope and nature of sexual violence against men in India, examine the effectiveness of current legal protections for male victims, explore societal norms and barriers to reporting, and propose legislative reforms for gender-neutral protection. The study reveals a significant lack of legal safeguards for male victims of sexual violence, despite recent legal revisions. This paper posits that the lack of gender-neutral legislation not only deprives justice to male rape survivors but also perpetuates dangerous notions about masculinity and victims as well. In light of these findings, how can India's legal system be reformed to provide equal protection and support for all victims of sexual violence, regardless of gender? By delving into this issue, the study seeks to contribute to the ongoing conversation on sexual violence and advocates for necessary legal and societal norms to ensure that all victims, regardless of gender, receive necessary support and protection.

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INTRODUCTION

In the patriarchal society where we live, we talk about equality and the lawmakers are trying to maintain a balanced system for the citizens. We have come across cases where crimes against women have been recognized and acted upon. But when it comes to crime against men, it is something less talked about. It shows that our society is changing but the change is not positive. The issue is not that only men are seen as the perpetrators of crime against women, but we do not want crime against anyone. All are human beings first and their genders are secondary. In the past few years, sexual harassment and domestic violence have increased against men¹. From time to time, we have seen that legislation has been initiated in instances of women suffering or injustice. But when there is a crime committed against a man, the law remains silent as men can be perceived as being accused, but not as victims in this patriarchal society. This kind of approach is going to send a wrong message to future generations, and it is high time now to prepare gender-neutral laws for any wrongdoing against anyone.

To understand the atrocities experienced by men in India there is a need for more cross-sectional studies of married men and men with intimate partners. Because domestic violence against men is not recognized by the law in India, it becomes difficult to believe the woman is a perpetrator and the man is a victim. India is a male-dominated society, there has been common practice and belief that psychological and physical abuse is faced by women by their male counterparts. On one hand, gender-based violence has been recognized as a violation of human rights and it has been recognized as a global public health problem, on the other hand, there is hardly any data or research done on violence against men². As a result, the growing number of men who are at the receiving end of any kind of violence or harassment, are facing a lot of mental health issues including Post-Traumatic Stress Disorder, Depression, Substance Abuse as well as increased rates of Suicide. There is a myth in our society that sexual assaults

¹ "Jalandhar Male Rape: Are Men Safe in India?", The Daily Guardian (2020) <https://thedailyguardian.com/jalandhar-male-rape-are-men-safe-in-india/> accessed 16 July 2024

² Ratislav Sediq and others, "Experiences of Violence and Abuse Among Internally Displaced and Host Community Pregnant Women and Girls in Duhok, Iraq: A Cross-Sectional Study", (2019) 39 J Epidemiol Glob Health <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6437789/> accessed 16 July 2024.

do not happen to men, and on happen to them in prison³. Due to the stigma negatively impacting the social experiences of the male survivors, in most of es, they avoid reporting or disclosure.

In India, Section 377 of the Indian Penal Code mentions that women can also be included as perpetrators of crimes against men, women and animals. If any person commits sexual violence or rape against any living being, will be sentenced to lifetime imprisonment, fine or 10 years of jail⁴. But there is no specific law on male rape in India or otherwise. Though for the protection of male children against sexual assault, there is the 'Protection of Children from Sexual Offences' (POCSO), but there is no such provision for adult males⁵. The reason behind this kind of ignorance is the history of long-term conditioning and gender socialization that shapes our society and culture, which teaches men to be bold and strong and women to be submissive and soft. Society conditions them since their childhood that "men don't cry", and this pressure culminates into other difficulties like, can n n not hurt getting must be dominating and masculine etc. If they try to complain, they are bullied as being a girl and shamed by their own people. According to our society, men cannot be raped or violated, but men can be violated or raped by men as well as women. Due to all these stigma and societal pressures, male rape cases are not often reported, and, in some instances, they are ridiculed and judged for speaking up. So, in order to familiarize the fact that men can be sexually violated, first what needs to be normalized is that men can be vulnerable too.

Depending on the existing literature, adult male sexual victimization (AMSV) is overshadowed by the data produced on female victimization⁶. Male victims face greater stigma and lesser resources, and they face more barriers while reporting any incidence of sexual violence, and for a long time in history, there was nothing called 'rape of a man' hence, their pleas have been denied or misunderstood by our society. To present equality before the law, the punishment for both the male and the female perpetrators should be the same, based on the same kind of crimes, otherwise, gender biases will always exist when it comes to crime against any individual⁷.

³ "Male Survivors of Sexual Assault", State University of New York at Fredonia

<https://www.fredonia.edu/student-life/sexual-assault/malesurvivors> accessed 16 July 2024.

⁴ "Rape Against Men", Legal Service India <https://www.legalserviceindia.com/legal/article-10520-rape-against-men-.html> accessed 16 July 2024.

⁵ Shreya Mathur, "Critical Analysis of Rape of Male in India", iPleaders (2020) <https://blog.iplayers.in/critical-analysis-of-rape-of-male-in-india/> accessed 16 July 2024.

⁶ Tanya S. Nickerson and others, "Experiences of Adult Male Sexual Victimization: A Qualitative Analysis", (2023) 37 Journal of Interpersonal Violence <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10135558/> accessed 16 July 2024.

⁷ Chandrima Sinha and others, "Adult Male Victims of Rape: Need of Legal Recognition in India", (2021) 24 Journal of Indian Law and Society

Section 498A of the IPC, while it recognizes men as liable for practising domestic violence against women within the household, but is mentioned the other way around. Section 3 of the 'Protection of Women from Domestic Violence Act of 2005' also does not rule against women for such violence against men. These kind of provisions and laws always portray women as innocent and men as guilty. Article 14 of the Indian Constitution guarantees all citizens the right to equal treatment, and Article 15 prohibits any discrimination based on sex, caste, religion, place of birth or race⁸. According to the Partner Abuse State of Knowledge project (PASK), the occurrence of male spouse violence is higher in India than UK, USA and Canada⁹. Although there are extensive Sustainable Development Goals focusing on well-being for all, the issue of sexual violence faced by men is seldom researched. Right now, there is a pressing need to frame gender-neutral and anti-discriminatory laws, so that the perpetrators are punished and the victims receive the necessary support and resources, irrespective of their gender.

Our cultural stereotypes inculcate gender discrimination in almost every sphere of our life. Women are seen as the weaker sex than men, and men would be considered weaker if they come out as vulnerable or emotional. The very idea of masculinity is based on the ability to exercise power over others and play the role of the dominating male. The patriarchal system upholds social inequalities by considering men as leaders, providers and protectors. When violence against men is intended, it not only inflicts deep trauma on the individual man, but it also disempowers his community by instilling a sense of vulnerability and fear¹⁰. This kind of gendered violence against men is targeted to cripple the masculine attributes that have always been glorified. And when these victimized men try to disclose this assault, their manhood is questioned and society equalizes them with a woman. Naturally, the question arises what is the role of the law and policymakers to safeguard or support the male victims of sexual violence?

The government should try to change these stereotypical practices and there must be separate laws addressed towards male victims. Only when policymakers and advocates address sexual

https://www.researchgate.net/publication/352836485_Adult_Male_Victims_of_Rape_Need_of_Legal_Recognition_in_India accessed 16 July 2024.

⁸ Anonymous, "An Indian Perspective on Domestic Violence Against Men", Times of India (2020)

<https://timesofindia.indiatimes.com/readersblog/my-thoughts-on-paper/an-indian-perspective-on-domestic-violence-against-men-50632/> accessed 16 July 2024.

⁹ Swapnali Pawar and others, "Prevalence and Risk Factors of Physical Violence Against Husbands: Evidence from India", International Institute for Population Sciences (2021)

https://www.iipsindia.ac.in/sites/default/files/Prevalence_and_risk_factors_of_physical_violence_against_husbands_evidence_from_India.pdf accessed 16 July 2024.

¹⁰ "A Feminist Approach to Sexual Violence Against Men: The Case of the DRC", King's College London (2022) <https://www.kcl.ac.uk/a-feminist-approach-to-sexual-violence-against-men-the-case-of-the-drc> accessed 16 July 2024.

violence against male victims, then the other males who are victimized for not fitting into the cultural norms can be supported, like assaults against gay and trans-men, whose sexuality remains under question for not being masculine enough¹¹. So, the legislative vacuum and the legal gap need to be filled with better gender-neutral laws and society needs to be more aware and empathetic towards crime against men.

EVOLUTION OF SECTION 377 OF THE INDIAN PENAL CODE

Historical Context of Section 377

Sec 377 of the Indian Penal Code was instituted in 1861 during the British imperial rule in India. It forbade "carnal intercourse against the order of nature," which involves both consensual and non-consensual homosexual acts, as well as bestiality. The section was modelled after the Buggery Act of 1533¹² in England, the section reflected the moral standards and legal principles of the victorian-era¹³.

Legislative Background

Section 377 was part of IPC and was formulated by Lord Thomas Babington Macaulay. The central goal was to declare certain sexual activities as illegal and unnatural by the colonial rulers. It was influenced by Judeo-Christian moral values which were predominant in Victorian England, which considered queer sexual practices as immoral and punishable.

Impact on LGBTQ+ Community

The legal measures had adverse effects on the LGBTQ+ community in India. For over a century and a half, Section 377 was used to suppress and ostracize individuals who engage in consensual same-sex relationships. It prolonged social prejudice, discrimination, and violence against LGBTQ+ individuals¹⁴.

¹¹ "Male Victims", National Sexual Violence Resource Center https://endsexualviolence.org/where_we_stand/male-victims/ accessed 16 July 2024.

¹² Buggery Act 1533 (UK).

¹³ "Tracing the History of IPC Section 377," Factly (2021) <https://factly.in/tracing-the-history-of-ipc-section-377/> accessed 16 July 2024.

¹⁴ "Section 377: Homosexuality and the Supreme Court," India Today (2018) <https://www.indiatoday.in/fyi/story/section-377-homosexuality-criminal-supreme-court-1281259-2018-07-10> accessed 16 July 2024.

Judicial Review and Partial Decriminalization

In 2009, the Delhi High Court issued a landmark ruling in *Naz Foundation v. Government of NCT of Delhi*¹⁵, abolishing criminal penalties for unforced homosexual acts among adults. In 2013, the Supreme Court invalidated this judgment in *Suresh Kumar Koushal v. Naz Foundation*¹⁶, which revived Section 377, highlighting the necessity of the legislature to address this issue. The Supreme Court decision faced an extensive critique, provoking renewed advocacy and legal realms. In 2018, the Supreme Court abolished criminal penalties for voluntary homosexual acts, narrowing the scope of Section 377 to eliminate voluntary intimate activity between adults¹⁷.

LEGAL IMPLICATIONS OF THE BNS ACT

The BNS Act¹⁸, of 2023, has been enforced by the Government of India to revise the IPC formulated during the British period in India. Probably the most astounding and hotly debated of all changes in this new law is the complete scrapping of Section 377¹⁹. In so doing, it has invited strong criticism for removing a section that, through the course of harassment by lawsuits over the years, had been interpreted to protect the rights of LGBTQ+ individuals—begging the question, are their rights still guarded under the new legal regime? Formerly, Section 377 penalized "carnal intercourse against the order of nature," which incorporates forced sexual acts and acts that include animals. The Supreme Court of India while decriminalizing adult homosexual acts in 2018 partially invalidated it so that male victims of contact with other men or animals could still have some legal redress.

Rape and sexual assault are what sexual offences mean in this bill; these are mainly carried out by men against women or children. According to this definition, adult males are not protected from any form of sexual violence. This omission has given rise to grave concerns among jurists and advocates who argue that it leaves a huge lacuna in our legal framework meant for safeguarding individuals from all forms of sexual violence. This legislation creates a situation where males can never say they are sexually abused by categorically disregarding them as

¹⁵ *Naz Foundation v. Government of NCT of Delhi* [2009] 160 DLT 277 (Delhi High Court).

¹⁶ *Suresh Kumar Koushal v. Naz Foundation* [2013] 1 SCC 1 (Supreme Court of India).

¹⁷ *Navtej Singh Johar v. Union of India* [2018] 10 SCC 1 (Supreme Court of India).

¹⁸ *Bharatiya Nyay Sanhita Act 2023* (India)

¹⁹ *Indian Penal Code 1860, s 377* (India).

possible rape victims. It effectively disregards a significant group of potential victims, leaving them without legal recourse.

This legislative change has ignited discussions about generalising laws across genders so that both female and male victims of rape should be treated equally under the same law. They assert that this bill does not capture the true nature of things or reality by asserting that

STATISTIC OF THE ISSUE

The removal of Section 377 and the subsequent lack of legal protection for male victims of sexual violence have been issues of major concern. Statistics and data reveal the extent of this problem. A survey conducted by the Indian Journal of Psychiatry²⁰ revealed that approximately 16% of males in India reported a history of sexual violence during their lifespan. Likewise, the National Family Health Survey²¹ (NFHS) did a survey in 2019 which found that about 3% of men aged between fifteen and forty - nine years had experienced sexual violence.

Reports show that stigma, shame and absence of legal protection make male victims less likely to report sexual abuse. This is according to findings published in the International Journal of Social Psychiatry²². Also, it has been observed in research that male survivors are prone to mental illnesses such as depression, anxiety and post-traumatic stress disorders (PTSD). Similarly, a study in the Journal Of Interpersonal Violence²³ shows that higher levels of psychological distress are experienced by male survivors compared to females because of societal beliefs and the absence of support systems.

The statistics highlight the urgent need for extensive and comprehensive legal safeguards that take into account the realities of sexual violence against all individuals, free from gender bias. The BNS Bill, 2023, has proposed legislative amendments and has intensified the urgent need for gender-neutral laws to secure fair and impartial treatment for all the victims of sexual violence.

²⁰ Indian Journal of Psychiatry, 'Survey on History of Sexual Violence Among Males in India' (2020) <https://www.indianjpsychiatry.org/article.asp?issn=0019-5545;year=2020;volume=62;issue=5;spage=558;epage=564> accessed 16 July 2024.

²¹ National Family Health Survey (NFHS-5) 2019-20, Ministry of Health and Family Welfare, India http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf accessed 16 July 2024.

²² International Journal of Social Psychiatry, 'Stigma and Reporting of Sexual Abuse Among Male Victims in India' (2021) <https://journals.sagepub.com/doi/full/10.1177/00207640211029390> accessed 16 July 2024.

²³ Journal of Interpersonal Violence, 'Psychological Distress Among Male Survivors of Sexual Violence' (2020) <https://journals.sagepub.com/doi/10.1177/0886260520916272> accessed 16 July 2024.

CASE STUDY

This case reexamines and challenges the traditional beliefs on sexual violence, emphasizing that men can be affected individuals and women can be offenders. Typically, men are considered as wrongdoers and women are considered as victims. The incident highlights the importance of a comprehensive understanding of sexual violence that embraces all genders.

A disturbing incident of gang-rape²⁴ in Jalandhar, Punjab, highlights the pressing demand for challenging the age-old traditional and cultural norms that encourage sexual violence. A 30-year-old married man from Jalandhar, Punjab, was allegedly kidnapped and sexually assaulted by four girls. In the shocking incident, the survivor was abducted in a car by the girls when he was on his way home near Kapurthala Road. According to the victim, he was stopped by the girls when he was on his way home. The girls handed him a piece of paper and asked him for help in locating an address written on the piece of paper. The girls then threw a chemical spray in his eyes. He was drugged and taken to a forest area. In the forest area, he was blindfolded and his hands were tied behind his back and then he was sexually assaulted by all four girls. Throughout the ordeal, the girls were drinking and also forced the victim to drink as well. The victim after being sexually assaulted was thrown into an isolated place around 3 am while still being blindfolded and his hands tied behind his back.

The Jalandhar incident stands as a clear reminder that sexual violence crosses gender lines. Addressing and preventing such violence requires a multifaceted approach, including challenging the age-old cultural norms, restructuring the legal framework, and ensuring ample support for all victims. By recognizing and confronting the whole spectrum of sexual violence, Society can strive towards a more balanced and fair approach to tackling this pervasive issue.

CALL FOR GENDER-NEUTRAL LAWS

The recent changes that have been proposed in India's legal system, specifically Section 377 being erased and sexual offences getting new meanings under the Bharatiya Nyaya Sanhita (BNS) Bill, 2023, bring to light the need for gender-neutral laws. Sexual offences are mainly defined by the law of today affecting women and children thereby not offering enough protection to male victims.

²⁴ Times Now Digital, 'Jalandhar man alleges he was kidnapped, gang-raped by four girls in their 20s' (Times Now News, 24 November 2022) <https://www.timesnownews.com/crime/jalandhar-man-alleges-he-was-kidnapped-gang-raped-by-four-girls-in-their-20s-article-95732303> accessed 18 July 2024.

Gender-neutral laws are absent, which makes many male victims of sexual violence without any legal remedy. Legal practitioners and activists campaign for legislation that acknowledges all victims of sexual harassment, irrespective of sex, therefore ensuring total protection and fairness. As highlighted by lawyer Aravind Narrain²⁵, "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".

Sexual violence laws in countries such as Canada and the UK have been gender neutral which focus on the act itself rather than the gender of the victim. India should emulate this approach to guarantee equal protection for all victims. Sexual violence leaves many male victims with deep mental scars. Depression, anxiety, and PTSD often plague these men. Society and the law fail to give them proper support making their pain worse. Studies reveal male survivors often do not speak up as they fear others won't believe them or will judge them harshly. This silence adds to their mental burden.

Legal minds urge a rethinking of India's law governing sexual offences to cover all victims, no matter their gender. We want changes in the law so it punishes sexual violence based on what happened, not who did it to whom. This overhaul would make sure the law catches all offenders regardless of whether they're men, women, or third gender.

This is a call for the development of a strong base that would offer psychological therapy, legal support, and social facilities to male victims of sexual violence. Consequently, there must be an existence of some help systems that are essential in tackling the exceptional issues faced by male victims and guaranteeing them equal access to justice and recovery.

²⁵ Vrinda Grover, 'New criminal law Bill omits Section 377: How this impacts men and trans persons' (The News Minute, 14 December 2023) <https://www.thenewsminute.com/news/new-criminal-law-bill-omits-section-377-how-this-impacts-men-and-trans-persons> accessed 18 July 2024.