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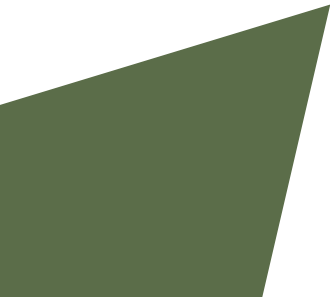
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**Me'n' too – Widening the Perspective of Sexual Abuse in India.**

**Aloka Surendra Naik**

Rape, Sexual Harassment, Sexual Abuse, Sexual Violence, terms, and phrases of similar connotations have been consistently associated with females. While the perception around such mind-set is comprehensible, however, it has led to male victims of these atrocities being shunned. The extent of this problem is grave and has only gotten worse with the current legal framework in India surrounding sexual abuse being women-centric. Through this paper, the author seeks to highlight the plight of adult males falling prey to these situations with no definite recourse. It is high time our legislature acknowledges the reality and sexual abuse laws in India are redesigned to be inclusive of all persons, free from any discrimination.

This paper includes a survey-questionnaire carried out by the author to have a public understanding of this issue.

Just as women, men face sexual abuse in a variety of settings including home, the workplace, schools, on the streets, in the military, and during the war, as well as in prisons and police custody. <sup>1</sup> The Indian Penal Code, 1860 (IPC) has a handful of provisions surrounding sexual abuse, namely, Sec. 354<sup>2</sup>, Sec. 354A<sup>3</sup>, Sec. 354B<sup>4</sup>, Sec. 354C<sup>5</sup>, Sec. 375<sup>6</sup> & Sec. 376<sup>7</sup>. All of these sections are gender-specific, and rule that only men can be the perpetrators, and only women can be the victims. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013<sup>8</sup> also protects only women employees.

Such reasoning indicates that India has never believed that its adult men can be sexually harmed in any way. What goes without realization is the heavy toll that takes on men facing these situations.

## **REASONING ATTACHED TO GENDER SPECIFIC LAWS**

Years of social conditioning have closed the gap in the possibility to think that men can also be victims of sexual abuse. The society that we live in has turned a blind eye on this issue, and as a matter of fact, men have also been reluctant to speak about it.<sup>9</sup> Groth & Burgess (1980) have defined male sexual assault as one of the most *under-addressed* crimes, and that it is a combination

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<sup>1</sup> WHO | World report on violence and health, , [https://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](https://www.who.int/violence_injury_prevention/violence/world_report/en/) [last accessed 12 July 2020]

<sup>2</sup> Assault or criminal force to woman with intent to outrage her modesty.

<sup>3</sup> Sexual harassment and punishment for sexual harassment.

<sup>4</sup> Assault or use of criminal force to woman with intent to disrobe.

<sup>5</sup> Voyeurism.

<sup>6</sup> Rape.

<sup>7</sup> Punishment for rape.

<sup>8</sup> No. 14 of 2013, dated 9<sup>th</sup> December 2013

<sup>9</sup> MARTIN S. FIEBERT & LISA M. TUCCI, *Sexual Coercion: Men Victimized by Women*, 6 The Journal of Men's Studies, pg.131 (1998)

of cultural, social, legal & psychological issues.<sup>10</sup> The carved out stereotypical definition says that “Real men” are not supposed to be victims. It is because sexual victimization contradicts the cultural ideas of what it means to be a man—strong, powerful, self-sufficient, and impenetrable (Connell, 1995; Connell & Messerschmidt, 2005; Kimmel, 1996, 2003; Pollack, 2003; Sabo, 2003).<sup>11</sup> Most social orders in India and even abroad have always been patriarchal, where men are seen as the primary protectors, warriors, decision-makers. Being sexually victimized does not have a stand with this image of man, and hence the society is in total disregard towards men being sexually abused.

### **SUPPRESSIVE SOCIAL SANCTIONS**

Men are shamed for not being able to defend themselves from sexual abuse. Since they are expected to be ‘powerful’, they take in self-blame for not facing the situation in a socially desired manner.<sup>12</sup> Men believe that they could never endure sexual abuse, hence when this belief is reversed, they feel that they brought it upon themselves or did nothing to prevent it.<sup>13</sup> Men start questioning whether it happened to them because of something they did, or the type of person that they are. Frazier & Schauben (1994) have suggested that self-blame can be detrimental to a person’s recovery.<sup>14</sup>

*“For me, the worst part of the assault was I put myself at his hands. I willingly went to his house; hence, I put myself in a vulnerable position. So the blame will always be on my shoulders and the guilt will never go away.”<sup>15</sup>*

It is also noticed that men who are sexually abused see it as their masculinity being threatened. They feel that they have not lived up to the ideal image of a ‘real man’ and have the fear of being labeled as ‘gay’, ‘sissy’, ‘pansy’, ‘wuss’ etc.<sup>16</sup>

Groth and Burgess (1980), Kelly (1988), Berrington and Jones (2002), and Lees (1997) have stated that masculinity is a social concept. Male rape victims may be reluctant to expose themselves to society as victims of a crime that is seen solely to affect the female population. According to AHRC (2006), the common notion is that men act, women are acted upon.

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<sup>10</sup> Samantha Hodge & David Canter, *Victims and Perpetrators of Male Sexual Assault*, 13 *Journal of Interpersonal Violence*, pgs.222-223 (1998) [emphasis added]

<sup>11</sup> Karen G. Weiss, *Too Ashamed to Report: Deconstructing the Shame of Sexual Victimization*, 5 *Feminist Criminology*, pg.289 (2010)

<sup>12</sup> *Ibid*, pg. 299.

<sup>13</sup> Michelle Davies, *Male sexual assault victims: a selective review of the literature and implications for support services*, 7 *Aggression and Violent Behavior*, pg.204 (2002)

<sup>14</sup> Jayne Walker, John Archer & Michelle Davies, *Effects of Rape on Men: A Descriptive Analysis*, 34 *Archives of Sexual Behaviour*, pg.70 (2005)

<sup>15</sup> *Ibid*, pg.77

<sup>16</sup> *Ibid*, *supra* note 11, pg.290



Women are seen as succumbing. Even where both the parties involved are men, where, the raped man is culturally feminized by the act of rape.<sup>17</sup>

In cases where men do not blame themselves, society does. This includes close family, friends (Walker, 1998), even police & medical professionals (Mezey & King, 1989). Experimental studies show that male victims are often blamed more than female victims for rape (Davies, 2000 & Ford, 1998).<sup>18</sup>

In *R vs. Richards*<sup>19</sup>, –

(This was the first-ever case of male rape to be decided in court.)

The complainant was a 17-year-old homeless hosteller. One day, he was accompanying the defendant for several hours. After the two had drinks, the defendant choked the victim, forced him to have oral sex, and then attempted to rape him. The defence counsel, in this case, made statements without elaboration that could be said to imply doubt or blame on the complainant. He made references to the complainant meeting a person he hardly knew, whether he resisted the act, or recounted certain instances of the assault. Here, although the culprit was sentenced to life imprisonment, it gives us a sense of how blame games are played on the victim.<sup>20</sup>

Studies by Jones (1992), Sagarin (1976), Groth & Burgess (1980) have incurred that sexuality is not a ground for committing the offence, rather it is a display of dominance and power.<sup>21</sup>

Some communities see sexual or flirty approaches from women to men as a sign of social accomplishment. So when a move is made by a woman on a man who does not appreciate it, members of this community are in disbelief, and often mock the victim.

*Hussain\** is a crime reporter, who once started getting calls from an unknown number. A female had been saying inappropriate things to him. While at first, he ignored, he later passed on the number to a female Superintendent of Police (SP) who immediately remarked, “*Ladki chhed rahi hai toh chhid jao na!* [If a girl’s teasing you, why don't you just be happily teased]”. It was only

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<sup>17</sup> Aliraza Javaid, *Feminism, masculinity and male rape: bringing male rape 'out of the closet'*, Journal of Gender Studies pgs.1,5 (2014)

<sup>18</sup> *Ibid, supra* note 13, pgs.205, 211

<sup>19</sup> 4<sup>th</sup> May 1995 (Unreported)

<sup>20</sup> Philip N. S. Rumney, *Gender Neutrality, Rape and Trial Talk*, 21 International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique , pgs.144-145 (2008)

<sup>21</sup> *Ibid, supra* note 10, pgs.223,225

when Hussain told her that he was uncomfortable did she give the anonymous female a stern warning.<sup>22</sup>

*Shashank\** says that he once decided to drop a female friend home at night, after a party. She ended up forcing herself on him and he was shaken by the incident. When he told his roommate about it, he laughed and said that a thousand men would kill to be in his shoes.<sup>23</sup>

*\*Names changed to protect privacy.*

*Krishnan* came out about being raped after the horrendous *Nirbhaya*<sup>24</sup> incident. It happened to him in Kerala when he was 29 years old. He was walking to his aunt's house when a stranger followed him, pinned him down in a dark lane, and raped him. He did not speak about it to his family since he thought nobody would believe that a grown man could be attacked. He blamed himself and would break down even when television shows discussed rape.<sup>25</sup>

## PSYCHOLOGICAL CONSEQUENCES

The repercussions of sexual abuse on men are devastating. It is important to look beyond the distinction between men & women and to recognize that all human beings feel the same things when they endure violation.

WHO<sup>26</sup> lists a range of psychological effects, that occur both in the immediate period after the assault and over the long term. These include guilt, anger, anxiety, depression, post-traumatic stress disorder, sexual dysfunction, somatic complaints, sleep disturbances, withdrawal from relationships, and attempted suicide<sup>27</sup>.

PTSD (Post-Traumatic Stress Disorder) is a common aftermath of sexually assaulted men, and if untreated, may lead to post-rape sexual dysfunction. It can result in sexual difficulties such as inhibited orgasms, impotence, promiscuity, and sexual aversion or abstinence (Goyer & Eddleman, 1984; Mezy & King, 1989; Sarrel & Masters, 1982). Results of non-treatment also

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<sup>22</sup> Zara Khan, *Adam, what do you mean you were teased?* | *thehindu.com* (2017), <https://www.thehindu.com/thread/reflections/men-too-may-be-sexually-harassed/article18351375.ece> [last accessed 16 July 2020]

<sup>23</sup> *Ibid.*

<sup>24</sup> What is Nirbhaya case? | India News - Times of India, , <https://timesofindia.indiatimes.com/india/what-is-nirbhaya-case/articleshow/72868430.cms> [last accessed 21 July 2020]

<sup>25</sup> Priya M Menon, *Lacking support, male rape victims stay silent* | *Chennai News - Times of India* (2013), <https://timesofindia.indiatimes.com/city/chennai/Lacking-support-male-rape-victims-stay-silent/articleshow/18524668.cms> [last accessed 14 July 2020]

<sup>26</sup> World Health Organisation

<sup>27</sup> WHO | World report on violence and health, , [https://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](https://www.who.int/violence_injury_prevention/violence/world_report/en/) [last accessed 12 July 2020]

include increased alcohol consumption, rape-related phobias, suicidality, sleep disturbances (insomnia, nightmares), somatic complaints, difficulties in interpersonal relationships, fear of men, and social isolation (Goyer & Eddleman, 1984; Kaufman, DiVasto, Jackson, Voorhess, & Christy, 1980; Mezy & King, 1989; Myers, 1989)<sup>28</sup>.

*Ethan Hanson* was a victim of abuse in the U.S military. He was one of a group of Marine recruits who were sexually assaulted in the showers during boot camp. The incident took place while he was in the shower. The drill instructor was prosecuted, but the trauma of the incident still haunts *Mr. Hanson*. Immediately after the incident, he suffered a panic attack. He was admitted to the Navy Hospital for suicidal tendencies, but when his health failed to improve after 4 weeks, the Marine Corps forced him out of service. What hurt him was the discharge papers stated the reason as “failure to adapt to military life.” to avoid giving medical treatment or compensating him. The worst effect that remains to date is that he cannot take a shower anymore. Instead, he rinses quickly with a plastic cup. Close contact with hot water or steam makes him want to throw up.<sup>29</sup>

*Bill Minnix* was kicked out of the U.S Air Force in 1973, owing to the mental trauma he suffered post when he was forcefully made to engage in sexual acts by older enlisted men in radar school. He was 17 when it happened to him and his peers, they were compelled to perform oral sex or were sodomized. Out of shame, he could not report it. It led to a decline in his performance in school, and after that, he was finally forced to discharge. *Mr. Minnix* did not speak about this incident for the next 40 years, fearing wrath from the church and neighbors. He shut off himself from the world in anger and shame, and burned through jobs and two marriages, drinking to numb his loathing. However, he has now come to terms with the incident through counseling.<sup>30</sup>

Victims also tend to believe that their masculine ego is hurt, or their masculinity has been withdrawn due to sexual assault. They have been seen trying to mend it, or re-affirm it by engaging in risky, bold behavior including violence to re-establish or repair their “broken” masculinity (Carlson, 2008) and (Mullaney, 2007).<sup>31</sup>

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<sup>28</sup> Paul J. Isely & David Gehrenbeck- Shim, *SEXUAL ASSAULT OF MEN IN THE COMMUNITY*, 25 JOURNAL OF COMMUNITY PSYCHOLOGY, pg.160 (1997)

<sup>29</sup> Dave Phillips, *Six Men Tell Their Stories Of Sexual Assault In The Military* | *The New York Times* (2019), <https://www.nytimes.com/interactive/2019/09/10/us/men-military-sexual-assault.html?mtrref=www.google.com&assetType=REGIWALL> [last accessed 21 July 2020]

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid*, *supra* note 17, pg.6

*“The sense of powerlessness I experienced during the assault totally surprised me. I thought I was pretty good at handling potentially violent situations as I worked in a night shelter for men. However, I never imagined I could be so vulnerable and become a victim. It was a big shock to my male ego.”*<sup>32</sup>

A man also reported wanting to die and hence crashed his car in a wall, near the location where he was assaulted.<sup>33</sup>

After-effects also include men questioning their sexuality. Men having erections and experiencing orgasm often leads to people thinking that they are enjoying even unwanted sexual activity. Levin and Berlo (2004) argued that slight genital stimulation or stress can create erections even though no specific sexual stimulation is present. *An erection does not imply consent to having sex. Similar to females, the male erectile response is also involuntary.* Males experiencing an erection is not only a result of arousal, but it can also be due to mechanical stimulation.<sup>34</sup>

In *R v. Armstrong*<sup>35</sup> –

The complainant was a remand prisoner who claimed to have been sexually assaulted by an inmate. He said that his genitals were fondled, due to which he got an erection. The assailant then proceeded to sodomize him and forced the victim to also anally penetrate him. When asked whether he resisted it, he replied that he said “stop” but was too frightened to say anything further. The defence then suggested that since Armstrong had an erection, he gave the impression of ‘being keen’ and ‘sexually aroused’ and that he gave the ‘signal’ and ‘message’ that he was interested in intercourse. The accused was acquitted since there were no injuries on the victim and “no adequate evidence” to prove that the intercourse was non-consensual.<sup>36</sup>

Men have reported changes in their sexual behavior post-assault. Effects include erectile failure and libido. Some also did not feel like having relationships. They also expressed confusion and disgust about their sexual responses since they had an erection and ejaculated while being assaulted.<sup>37</sup>

*“Before the assault I was straight; however, since the assault I have begun to engage in voluntary homosexual activity. This causes me a great deal of distress as I feel I am not really homosexual but I cannot stop myself*

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<sup>32</sup> *Ibid, supra* note 14, pg.76

<sup>33</sup> *Ibid, supra* note 14, pg.76-77

<sup>34</sup> Danbaba Enoch Modi & Ojo Matthias Olufemi Dada, *Myths and effects of Rape on Male victims*, 1 American Journal of Psychology and Cognitive Science, pg.3 (2015) [emphasis added]

<sup>35</sup> 10 April 1995 (Unreported)

<sup>36</sup> *Ibid, supra* note 20, pg.145

<sup>37</sup> *Ibid, supra* note 36, pg.76

*having sex with men. I feel as if having sex with men I am punishing myself for letting the assault happen in the first place.”<sup>38</sup>*

All victims of sexual abuse require emotional support which helps them heal faster. However, studies have shown a hostile attitude or a confused reaction of support agencies towards male rape victims. Many RCCs (Rape Crisis Centres) are specifically geared towards providing its services to women, hence they are reluctant to treat male victims. RCC’s in the UK have no clear provisions to deal with male victims and men are turned away from these centers.<sup>39</sup>

Some victims found the attitude of therapists as helpful and supportive. However, they did remark about the lack of expertise to deal with issues of male sexual assault.<sup>40</sup>

## STATISTICAL DATA

Statistics on male sexual assault are difficult to procure, especially in places where male sexual abuse is not recognized. Severe underreporting due to social stigma has been seen even in countries where legal recourse exists.

Around 78 million males in the United States are victims of sexual assault or rape. Approximately 25,000 males in the United States were subjected to an aggravated form of sexual abuse or rape in 2009. In South Africa, 9.6% of men reported male-on-male sexual violence victimization. Government reports in the UK revealed that roughly 72,000 males are victims of sexual offences.<sup>41</sup>

Male college students aged 18-24 are 5 times more likely to be victims of sexual assault than non-college students of the same age.<sup>42</sup>

Adult male sexual abuse statistics in India are far from being accessible. Neither does our legal system recognize men as victims, nor has the government carried out any research/surveys. However, a study by the Delhi-based Centre for Civil Society found that approximately 18% of Indian adult men surveyed reported being coerced or forced to have sex. Of those, 16% claimed a female perpetrator and 2% claimed a male perpetrator.<sup>43</sup>

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<sup>38</sup> *Ibid, supra* note 36, pg.76

<sup>39</sup> *Ibid, supra* note 17, pg.3

<sup>40</sup> *Ibid, supra* note 14, pg.75

<sup>41</sup> Somya Singh, *Necessity to Think Beyond Male on Female Paradigm* , 1 International Journal of Research in Engineering, Science and Management, pg.467 (2018)

<sup>42</sup> Victims of Sexual Violence: Statistics | RAINN, , <https://www.rainn.org/statistics/victims-sexual-violence>.

<sup>43</sup> India’s law should recognise that men can be raped too | Centre For Civil Society, , <https://ccsindia.org/indias-law-should-recognise-men-can-be-raped-too> [last accessed 19 July 2020]

## NOT AN INTERNATIONAL PROBLEM YET?

International instruments on any subject raise awareness of the same and urge individuals and governments to work towards its cause. Sexual offences against males are seen worldwide, with horrific cases coming to light not only in developed countries but also in other smaller nations.

Some instances include a Coca-Cola bottle inserted in a man's penis in Cambodia (circa 1990); in Tao, a bell-boy was sexually assaulted at knifepoint by a guest; a refugee was tortured and raped by Myanmar soldiers in camps in 2017, he says he was not the only victim.<sup>44</sup>

*“The international instruments that contain the most comprehensive and meaningful definitions of sexual violence exclude men. There are many ways the term “gender violence” has been fashioned by the United Nations resolutions, treaties, general comments, and consensus documents to favour women. No human rights instruments explicitly and comprehensively address “sexual violence against men”. This may be an assumption that sexual violence is a phenomenon prevalent only to women and girls”<sup>45</sup>*

Laws laid down in International instruments often form the basis of many State laws. Absence of express provisions laid out against male sexual abuse could partially be a reason why the issue has failed to gain substantial momentum, and also partly why many States do not have gender-inclusive laws of sexual abuse.

However, protection against sexual abuse is a basic human right that should be guaranteed to every single person. The UDHR<sup>46</sup> guarantees the right to life, liberty, and security of person.<sup>47</sup> It also says that every human has a right to an effective remedy for violation of his basic fundamental rights.<sup>48</sup> All of the rights and freedoms set in the declaration are available to anyone without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.<sup>49</sup> All are equal before the law and entitled without discrimination to equal protection of laws.<sup>50</sup>

These rights are reflected in the Constitution of India, enshrined through Article 21<sup>51</sup>, Article 32<sup>52</sup>, Article 15<sup>53</sup>, and Article 14<sup>54</sup> respectively. *Yet, our sexual violence laws continue to be gender-specific.*

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<sup>44</sup> Athira Nortajuddin, *Taking male rape seriously* | *The ASEAN Post* (2020), <https://theaseanpost.com/article/taking-male-rape-seriously>. [last accessed 15 July 2020]

<sup>45</sup> *Ibid*, *supra* note 34, pg.1 [emphasis added]

<sup>46</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [last accessed 21 July 2020]

<sup>47</sup> Article 3

<sup>48</sup> Article 8

<sup>49</sup> Article 2

<sup>50</sup> Article 7

<sup>51</sup> Protection of life and personal liberty.

<sup>52</sup> Remedies for enforcement of the rights conferred by this Part [III].

## IN OUR LEGISLATURE: A STORY OF CONSTANT DENIAL & NEGLECT

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India's development of having gender-neutral sexual violence laws had been fluctuating until the passing of The Criminal Laws (Amendment) Act, 2013.<sup>55</sup>

This quest began in 1997 with *Sakshi v. UOI*<sup>56</sup> asking the apex court to review the rigid penal-vaginal definition of Rape, challenged in *Sudesh Jhaku v. K. C. Jhaku*.<sup>57</sup> While the Supreme Court held the validity of the then existing definition, it framed precise issues to be considered by the Law Commission of India. In its 172<sup>nd</sup> report, the Law Commission sought to replace the word “rape” by “sexual assault” to include anal penetration as well as penetration with other objects. It also included fellatio.<sup>58</sup> The commission in its report acknowledged male victims of sexual assault

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*“Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence.”*<sup>59</sup>

The Protection of Children from Sexual Offences Act (POSCO)<sup>60</sup> was passed in 2012 to protect all children from offences of sexual harassment, sexual assault, and pornography.

Recommendations of the 172<sup>nd</sup> Law Commission Report found a place in The Criminal Law (Amendment) Bill, 2012<sup>61</sup> where it was sought to make rape gender-neutral, *by calling it “sexual assault”*. But before this bill was passed, the nation was shaken to the core with the brutal gang rape of “Nirbhaya” on 16 December 2012. During this time, the Justice Verma Commission (JVC) headed by Hon’ble Justice Jagdish Sharan Verma was constituted to look into amending the criminal law to provide for quicker trials and enhanced punishment for committing sexual assaults of extreme nature against women. The commission recommended retaining the title of Sec. 375 as “rape” as opposed to “sexual assault”. It also suggested making the offence partially gender-neutral, i.e. only from the perspective of the victim.<sup>62</sup>

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<sup>53</sup> Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>54</sup> Equality before law.

<sup>55</sup> No. 13 of 2013, dated 3<sup>rd</sup> February 2013

<sup>56</sup> (1999) 6 SCC 591 (before the Supreme Court)

<sup>57</sup> 62 (1996) DLT 563 (before the Delhi High Court)

<sup>58</sup> Harshad PATHAK, *Beyond the Binary: Rethinking Gender Neutrality in Indian Rape Law*, 11 Asian Journal of Comparative Law (2016) [last accessed 19 July 2020]

<sup>59</sup> Law Commission of India, *172<sup>nd</sup> Report on Review of Rape Laws*, pg. 19 (2000) [emphasis added]

<sup>60</sup> No. 32 of 2012, dated 19<sup>th</sup> June 2012

<sup>61</sup> Bill no. 130 of 2012, introduced in the Lok Sabha on 4<sup>th</sup> December 2012

<sup>62</sup> *Ibid*, *supra* note 58 [emphasis added]

The Criminal Laws (Amendment) Ordinance, 2013<sup>63</sup> was passed in February 2013, which contained a fully gender-neutral definition of rape, under the title of “sexual assault”. It also made all other provisions in the IPC regarding sexual violence gender-neutral. Although this ordinance was welcomed by many, it was criticized as “trivialising” women victims and as violating the JVC report. The backlash resulted in reverting to the gender-specific definition of rape and all other sexual abuse laws that we have today passed through the Criminal Laws (Amendment) Act, 2013. The current definition of rape is also, however, not in conformity with the recommendation. This decision deeply hurt the Queer community in our society.<sup>64</sup>

It is noteworthy that even during the times where the Parliament attempted to widen the scope of defining rape in India, it stuck to calling the offence as “sexual assault” rather than rape. Even though empathy was being shown towards male victims, legislative actions did indicate rigid minds - that penetrative offences can be rape only when a man is a perpetrator and woman, a victim.

Delhi-based lawyer Vrinda Grover denied the problem of male rape and depicted it as “mockery” towards female rape victims and survivors.<sup>65</sup>

A recent attempt was made through *Sanjiv Kumar v. UOI*<sup>66</sup> to reinstate the gender-neutral definition of “sexual assault” from the Ordinance of 2013 in place of Sec. 375 & Sec. 376 of the IPC as the law of the land. A concept described as **“THE MIDNIGHT ADULT”** was highlighted, that while all children are protected against sexual abuse, *this right is seized from males once they turn 18, for the sole reason of their gender*. It was argued that the gender-specific offence of rape miserably fails the test of Art 14 of the constitution on “everyone is equal before the law and no one can claim special privileges” and “equal protection of all alike in the same situation and under like circumstances”. The current law was also said to be violating the right to privacy guaranteed under Art. 21. It was stated, “One can equally argue that in the last two decades, our understanding of male rape and sexual assault has grown so “contested and outmoded” that images of male victims can no longer go unchallenged.”<sup>67</sup>

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<sup>63</sup> No. 3 of 2013, dated 3<sup>rd</sup> February 2013

<sup>64</sup> *Ibid*, *supra* note 58

<sup>65</sup> Christopher Norman Kujat, [\*GENDERED VIOLENCE IN THE SOCIO-LEGAL CONTEXT: WHEN YOUR SEX DEFINES WHETHER YOU CAN BE A PERPETRATOR OR A VICTIM: THE PROBLEM OF HETERONORMATIVITY & MASCULINITY IN THE CONTEXT OF “MALE RAPE” IN INDIA\*](#), pg.18 [last accessed 21 July 2020]

<sup>66</sup> WRIT PETITION (CIVIL) NO. 8745 OF 2017 (before the Delhi High Court) [emphasis added]

<sup>67</sup> *Ibid* [emphasis added]



The petitioner also narrated various instances of male sexual assault and also presented a study on how many countries have gender-neutral/ partially gender-neutral sexual abuse laws.<sup>68</sup> But despite several valid arguments, the petition was dismissed.

In the words of judges, “The issue falls in the realm of Parliament. We don’t want to say anything on it right now.”<sup>69</sup>

“We are not saying that a woman cannot rape a man but it’s being taken care of under different offence under the IPC and not ‘rape’.” Judges remarked on the petition as “*imaginative*” and said that the *classifications were valid*.<sup>70</sup>

This decision reflects a state of denial in Indian minds. Time and again, it has been seen that a grave and heinous incident has to take place in India for laws to be formulated or reviewed. Cases of *Vishakha*<sup>71</sup> and *Nirbhaya* are some examples. Many such instances can be listed. However, even though male sexual abuse has become prominent enough, India is reluctant to protect its adult men. *The situation has gotten to a state where even if sexually abused men do not feel bound by the social norms and wish to take action, none can be taken.*

## **PROSPECTING SEXUAL ABUSE AS A HUMAN RIGHTS VIOLATION**

In India, a woman’s body has always been considered sacrosanct. Sexual assaults on women are linked to outraging her modesty or taking away her dignity, which is why protection against these violations is given only to women. Chawla (2016) depicts the lack of representation of “male rape” in the media with an emphasis on films and TV in India.<sup>72</sup> However, it is time that we see past these attributions and view sexual abuse as a violation of basic human rights.

In 1996, in *Bodhisatwa v Subhra Chakraborty*<sup>73</sup>, the Supreme Court opined that rape “is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.” Subsequently, in *Railway Board v Chandrima Das*<sup>74</sup>, it emphasized that rape “is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved.” While the Supreme

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<sup>68</sup> *Ibid*

<sup>69</sup> SC declines PIL against anti-rape law | thehindu.com, (2018), <https://www.thehindu.com/news/national/sc-declines-pil-against-anti-rape-law/article25478978.ece> [last accessed 10 July 2020]

<sup>70</sup> Harish V Nair, *Parliament can make law on rape gender-neutral, says Supreme Court - Mail Today News* (2018), <https://www.indiatoday.in/mail-today/story/parliament-can-make-law-on-rape-gender-neutral-says-supreme-court-1160829-2018-02-03>. [emphasis added] [last accessed 10 July 2020]

<sup>71</sup> *Vishakha vs. State of Rajasthan*, AIR 1997 SC 3011 (before the Supreme Court)

<sup>72</sup> *Ibid*, *supra* note 65, pg.21

<sup>73</sup> (1996) 1 SCC 490 (before the Supreme Court)

<sup>74</sup> (2000) 2 SCC 465 (before the Supreme Court)

Court has always been vocal about no room for violation against fundamental rights, sadly, it has failed to recognize these rights against men being sexually abused.<sup>75</sup>

*“Conceptualizing rape only as a violation of the victim’s bodily integrity lends ample support to its characterization as a human rights violation, and, accordingly, ensures that its adjudication is not contingent upon the victim’s social positioning, but rather entitlement to his or her body.”*<sup>76</sup>

## **NEED TO ACCEPT THE REALITY OF “RAPE”**

Our legislature needs to realize that rape is a wide concept, and while they redesign rape laws to be gender-neutral, the same must be titled as “rape” rather than “sexual assault”, as men and women both, can be raped. Definitions given by many writers manifest the same.

Numerous writers have defined rape to be a gender-neutral offence. Veronen & Kilpatrick (1983) have defined rape to include *“any form of non-consensual sexual activity”*. Kilpatrick (1989) defines sexual assault as including (a) rape, the *“sexual penetration of the victim’s mouth, anus, or vagina by the assailant”*; (b) attempted rape; (c) sexual molestation, *“incidents that were neither completed rape or attempted rape, but included some form of actual sexual contact”*; (d) attempted sexual molestation; and (e) other sexual assault, *“incidents of criminal sexual exposure (‘flashing’), voyeurism (‘peeping Tom’), or coercion rather than the use or threat of violence.”* A definition specifying *“penetration of the victim by the offender”* by Koss (1988) could include penetrating either a female or a male victim.<sup>77</sup>

Dissenting from the view in *Sanjiv Kumar*<sup>78</sup>, Sec. 377<sup>79</sup> IPC is not an adequate law to deal with male rape victims, simply for the reason that the word “rape” is not used and *extensively defined* as in Sec. 375 IPC. It also does not define what is consensual and non-consensual. The scope of rape is wide, and for those who were violated in a non-penile manner, not even this recourse exists.<sup>80</sup>

Nations like the U.S, South Africa & France have completely gender-neutral rape laws with rigorous punishments.<sup>81</sup> An instance in the U.S involved an employee of Domino’s Pizza who

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<sup>75</sup> *Ibid*, *supra* note 58

<sup>76</sup> *Ibid*

<sup>77</sup> Charlene L. Muehlenhard et al., *Definitions of Rape: Scientific and Political Implications*, 48 Journal of Social Issues, pgs. 25-26 (1992)

<sup>78</sup> WRIT PETITION (CIVIL) NO. 8745 OF 2017 (before the High Court of Delhi)

<sup>79</sup> Unnatural Offences

<sup>80</sup> India’s law should recognise that men can be raped too | Centre For Civil Society, , <https://ccsindia.org/indias-law-should-recognise-men-can-be-raped-too>. [last accessed 19 July 2020]

<sup>81</sup> Rachita Kauldhar, *Content analysis of social crime stories in the Times of India and the Hindu: A study of Criminal Law (Amendment) Act 2013* (2017).

was sexually abused by his female supervisor. The chain was ordered to pay their employee over \$237,000 in damages.<sup>82</sup>

### **The Necessity for Gender Neutrality in Sexual Harassment as well:**

Along with rape, other provisions of sexual harassment can no longer be made out to only affect women. The UN Women<sup>83</sup> has a gender-neutral definition of sexual harassment, which states that both males and females can be either victims or offenders.<sup>84</sup>

The EEOC<sup>85</sup> of the U.S has defined sexual harassment in its guidelines as unwelcome behavior of a sexual nature. “For example, a man whistles at a woman when she walks by. Or a woman looks a man up and down when he walks towards her.” These examples indicate the gender-neutral nature of their definition.<sup>86</sup> India needs to open its minds to this and make the necessary amendments to its criminal laws.

### **Men also seek the Security of Person at the Workplace:**

Male employees of various establishments have shared their stories of being sexually harassed by employers and co-workers. This is an indication that our legislature should also consider making The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also a gender-neutral enactment.

*Krishna\** had joined a new office where a female employee started passing lewd comments at him which then went on to inappropriate touching occasionally. She also nearly disrobed him at an office party, despite being told that he was uncomfortable. *Krishna* then proceeded to complain to HR. The HR instead of taking action told him that she would lose her job, and the complaint would also lead to her future and marriage prospects being ruined. But *Krishna* was resolute. The female colleague in question received a slap on the wrist, and from then on, she kept away from him.<sup>87</sup>

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<sup>82</sup> Chain Must Pay Male Sex-Harassment Victim, (1995), <https://www.nytimes.com/1995/11/24/us/chain-must-pay-male-sex-harassment-victim.html> [last accessed 18 July 2020]

<sup>83</sup> UN Women is the [United Nations](https://www.un.org/womenwatch/) entity dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide.

<sup>84</sup> UN Women | UN System Coordination - Anti-harassment, , <https://www.un.org/womenwatch/uncoordinated/antiharassment.html> [last accessed 21 July 2020]

<sup>85</sup> Equal Employment Opportunity Commission, formed on 12<sup>th</sup> July 1965

<sup>86</sup> What is sexual harassment? | un.org, , <https://www.un.org/womenwatch/osagi/pdf/whatish.pdf> [last accessed 21 July 2020]

<sup>87</sup> Zara Khan, *Adam, what do you mean you were teased?* | [thehindu.com](https://www.thehindu.com/thread/reflections/men-too-may-be-sexually-harassed/article18351375.ece) (2017), <https://www.thehindu.com/thread/reflections/men-too-may-be-sexually-harassed/article18351375.ece> [last accessed 16 July 2020]

*\*Name changed to protect privacy.*

A trainee accountant once narrated an instance with a female. Her flirting seemed harmless at first, but got out of control when he started being the main target of her flirting. She once intentionally spread her legs in front of his cubicle, and would also make excuses to take coffee breaks right when he wanted to step out for a smoke. In one instance, she also grabbed his buttocks. He says he felt extremely uncomfortable and wanted to slap her but could not, because of the family virtues he had been brought up with.<sup>88</sup>

The closest that India has come to safeguarding its adult men from sexual harassment is through the UGC (POSH)<sup>89</sup> Regulations, 2015, in which the offence of sexual harassment is gender-neutral. However, circumstances and parties should be pertaining to the institution only.

Reactions to having gender-neutral laws included a section of people who opined that it disregards the atrocities on women. In fact, the main focus of NCW<sup>90</sup> recommendations to the Criminal Laws (Amendment), 2012 was that the offence of rape must not be gender-neutral.<sup>91</sup> It is crucial to understand that gender-neutral sexual violence laws only seek to guarantee equal rights to all genders. As stated in *Sanjiv Kumar*<sup>92</sup> –

*“The recognition of male victimization does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts.”*

## SURVEY

A survey-cum-questionnaire was carried out by the author to study public opinion on the gravity of this issue<sup>93</sup>. This exercise was completed by sharing an online form. Participation was limited to residents of India, who were required to be aged 18+. A total of 340 people participated in the survey (Males – 208, Females – 131, other – 01). Out of these, 24 participants did not permit to

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<sup>88</sup> Kritika Kapoor, *Men too are victims of sexual harassment* - *Times of India* (2012), <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Men-too-are-victims-of-sexual-harassment/articleshow/16336627.cms> [last accessed 18 July 2020]

<sup>89</sup> **University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015**, dated 2<sup>nd</sup> May 2016 - made in lieu of the powers conferred by University Grants Commission Act, 1956 (No. 3 of 1956)

<sup>90</sup> The **National Commission for Women** was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No.20 of 1990).

<sup>91</sup> 167<sup>th</sup> Report on The Criminal Law (Amendment) Bill, 2012, presented to Rajya Sabha on 1st March 2013 and laid on the table of Lok Sabha on 4th March, 2013

<sup>92</sup> WRIT PETITION (CIVIL) NO. 8745 OF 2017 (before the Delhi High Court) [emphasis added]

<sup>93</sup> Me'n' Too Survey - [https://docs.google.com/forms/d/1Atoq\\_0RNMiL3kxDyi6QcK\\_BHZZDC49Y6gTi79qpiBN8/edit](https://docs.google.com/forms/d/1Atoq_0RNMiL3kxDyi6QcK_BHZZDC49Y6gTi79qpiBN8/edit) [last accessed 19 July 2020]

share their answers. Hence, the data provided below is only an account of the answers permitted for use. These include 196 males and 120 females. A majority of the participants were aged between 18-25 years.

The survey included a series of close-ended and open-ended questions. When asked whether the participants had heard about men being raped, 82.6% answered in affirmative, while the rest 17.4% said that they had not heard of such a crime. Most of them also stated that they rarely come across these cases. Upon enquiring about the sources of such news, Social Media was ranked at the top, followed by Friends, Television, Newspapers, through a male who has faced sexual abuse and Radio. Other sources included NGOs, internet articles, and directed web search.

While 56.2% of participants were aware that India lacked a legal framework to protect its men from sexual abuse, 43.8% did not have knowledge of the same. Participants were also asked to express the need for having sexual violence protection laws in India for men, on a scale of 1 to 10 (10 being most needed and 1 being least needed). A whopping 54.6% chose **10**, expressing a dire need of having these laws. 12.6% opted **8**, followed by **9** (9.5%), **7** (7.9%), **5** (6%), **6** (3.8%), **4** (2.5%), **2** (1.6%), **3** (0.9%) and **1** (0.6%).

Some of the questions were exclusively directed towards males. A couple of these included whether they were subjected to sexual abuse and whether they have felt sexually vulnerable in any situation. Around 21% of males agreed to either being sexually abused or being vulnerable to being in such a situation. Another 16 to 20% mentioned that they might have been in either of the two situations. 3% of the men preferred not to speak about it, while the rest of 58 to 60% stated that had not experienced sexual abuse.

In one of the open-ended questions, participants were asked to narrate cases they had come across if any. While most responses included incidents of distant people, participants also shared the painful experiences of their friends or family. Cases of sexual harassment by teachers to students and even at the workplace came to light.

*“A tuition teacher asking the student to repeatedly visit washroom and would accompany the boy to the washroom. Would try to peep while the child is avoiding and trying to touch the private parts of the child.”*

*“Heard this many years back that a boy was sexually harassed by a lady. He went to police, but was neglected and laughed on by the police.”*

*“Butt slapping by a male boss. Use of excessive sexual innuendo in the workplace by colleagues or employers. I know of a boy who was made to massage a senior man every evening.”*

Men were also asked if they wished to share any incidents where they were victims of sexual harassment. Several came forward to share their stories. These men had been sexually harassed by strangers, acquaintances, and even by family members.

*“I gave a lift to a man on a bike but he started touching me inappropriately.” – Anonymous*

*“Yes.. where I was once sexually assaulted by my tuition teachers daughter who was much elder.” – Sunil*

*“When I was a kid my mom's cousin rubbed his dick against my back when I was sleeping, was terrified of the incident.” – Anonymous*

*“One day one man came and began to show some yoga postures but I felt little awkward with his touch and then I managed to go out of that situation....” – Anonymous*

*“This girl who was my manager and school friend, when travelling for a picnic, in a car, took my hand and held against her body in inappropriate places and touched me in inappropriate places too. Once my friend rested on me and ask for inappropriate favours.” – Anonymous*

*“It was on a bus, when as a teen I was going to driving school. A man sat next to me and started stroking my thighs. I was wearing shorts. Initially I thought he was just trying to squeeze into the seat. But he removed his hand the instant the conductor came to give a ticket and resumed as soon as the conduct left. He kept trying to inch his hands towards my crotch. I was stunned and speechless and could not react properly. Luckily my stop came and I ran out of the bus.” – Anonymous*

*“I am a cybersecurity analyst, cybercrime investigator and ethical hacker, I had a case where girls were getting messages from various numbers, and I had to identify the attacker, as the procedure was a bit long, me and my team chose 12 am the perfect time to physically check and capture tower traffic. We went to Calangute Goa for the first tower inspection, there were a lot of ladies (not Indian) who came to us at around 2 am, while we were working. The asked us if we wanted something, we said no. She started pulling us to them, our second team was heading toward us, (Calangute police) they saw everything, those ladies ran away... And we had to stop our work and leave. If we had to defend ourselves which we could do easily, we had a fear of getting in trouble for hurting women, as law favours them.” – Pranav*

Participants were also asked to express their opinions on sexual abuse faced by men. While a few thought that we did not need gender-neutral sexual abuse laws in the country, a large number opined on protecting men, advocating men’s mental health, and equal protection before the law.

*“A more troubling sexual crime that needs urgent consideration is that of sexual harassment of men by men. Our law makers lack the maturity to indulge in responsible public discourse on the subject, which is usually a precursor to the discussion and enactment of legislation. Till we have a more proactive civil society and a new breed of*

*politicians who believe in evidence based social reform and seek no electoral dividend by pretending to be prudes, the pervasive sexual crimes in our society will continue to be brushed under the carpet.” – Phiroze*

*“According to me since everyone is equal before the law, everyone should get justice equally. Whether it’s a man or a woman no one should suffer from injustice. Every voice should be heard and every incident of sexual offences against any gender should be reported and justice should be done.” – Dianne*

*“A lot of people believe that men are supposed to behave in a certain way, a certain emotionless way. And although this may not particularly be attributed to sexual harassment, it indeed does add sexual stigma into the dynamic. On another point, if there are laws to protect women against sexual harassment and if our Constitution and our judicial system preaches "equality", it should indeed bring into existence laws that can govern both, men, women and let's not forget the transgender populous as well. Our nation and the world is evolving, our judicial system needs to do the same.” – Craig*

*“Sexual violence can happen to anyone irrespective of their age, gender identity, sexual identity. The fact that there is no legal framework protecting men against sexual offences is in violation of Art 14.”*

*“Things like this do happen but sadly are not reported as they don’t turn out to be sensational enough. Secondly, our society is patriarchal to the point of being chauvinistic and so news items like these tend not to be reported as they paint a vulnerable picture of men in general. Men who undergo such abuse however, find themselves in a delicate position since society tends not to give them support and help they require.” – Ian*

### **Deductions:**

A study of this survey reveals that male rape is prevalent with most participants having heard about it. However, many indicated that they had rarely heard of such cases. This may be owing to people not speaking about it and the fact that there are no statutory provisions to take charge of these cases.

Top sources of news include social media, friends & television. Newspapers & radio were opted by fewer participants. The last two are mostly sources of news for the elder population, hence, it could be an indication that newspapers and radio are into covering mainstream and socially acceptable stories as to not lose their audience. Only one of the participants had heard from a male who had faced sexual abuse. Around 40% of men also admitted to being sexually harassed, assaulted, or being prone to such situations, and 3% preferred not to speak about it.

Actions from participants, like staying anonymous while sharing their stories, preferring not to talk about it and even not permitting the author to use answers indicate reluctance. About half of the participants were also not aware that men are not legally protected against sexual abuse, and

more than half of them expressed a pressing need to have the necessary laws to protect men. The survey has given a positive response to the cause of this paper. Stories shared by participants, especially men who share their own horrific experiences show that sexual abuse is not a gender-specific offence. Any person can display perverted behavior and any person could be subjected to it.

## RECENT DEVELOPMENT

Currently, the Criminal Laws (Amendment) Bill, 2019<sup>94</sup> is pending in the Parliament. It was introduced by honorable member K.T.S Tulsı in 2019. It seeks to amend Sec.354, Sec.354A, Sec.354B, Sec.354C, Sec.375, Sec.376, Sec.376A<sup>95</sup>, Sec.376C<sup>96</sup> & Sec.376D<sup>97</sup> of the IPC. It also seeks to add Sec. 375A<sup>98</sup> as a provision to widen the scope of sexual assault. This bill is looking out to break our silence on the issue of male and transgender rape and questioning social constructs that glorify machismo, reduce men and transgender to stereotypes and force them to mask their feelings. He has also mentioned that the *intention of this bill is not to undermine sexual abuse faced by women, but rather to develop empathy for all.*<sup>99</sup> The bill if passed will be a breakthrough socio-legal development providing relief to millions.

## CONCLUSION

Legislative changes and personal attitudes go hand in hand when it comes to social issues. Along with statutory reforms, we ought to provide equal empathy and emotional support towards all genders. The healing process begins with one's family & friends. A victim should not be blamed for an offender's weakness.<sup>100</sup>

Individuals working in support agencies, hospitals, Rape Crisis Centres must be trained to cater to the specific needs of men. Sensitized handling of such cases by police forces will also go a long way. The development of highly accessible services for male victims of rape and sexual assault is likely to reduce the problems of under-reporting and the long-term pathological

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<sup>94</sup> Bill no. XVI of 2019, introduced in the Rajya Sabha on 12 July 2019

<sup>95</sup> Punishment for causing death or resulting in persistent vegetative state of victim.

<sup>96</sup> Sexual intercourse by a person in authority.

<sup>97</sup> Gang rape.

<sup>98</sup> Sexual assault and punishment of sexual assault.

<sup>99</sup> Statement of Objects & Reasons, Criminal Laws (Amendment) Bill, 2019 (XVI) [emphasis added]

<sup>100</sup> *Ibid, supra* note 34, pg.4 (2015)



consequences, associated with failure to receive psychological help or counselling at the time of the assault.<sup>101</sup>

Currently, the government is needed to carry out authorized surveys and collect statistics to know the physical & psychological state of victims. Any victims requiring medical attention must be catered to.

Awareness campaigns at large is also a need of the hour. Central & State Governments as well as NGO's need to take up this task. Engagements can be done through seminars, talk sessions by experts, programs on national channels, newspaper articles, educational institutions, radio, and stage plays that will help eradicate myths about male sexual abuse. One cannot deny that men do not get sexually abused because it is not spoken of. Eliminating social obstructions and building legislative pathways will lead us to realize the sheer injustice that has been caused to a huge section of our society and help deter these crimes in the future.

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<sup>101</sup> L. RENTOUL, N. APPLEBOOM, *Understanding the psychological impact of rape and serious sexual assault of men: a literature review*, 4 *Journal of Psychiatric and Mental Health Nursing*, pg.273 (1997)

