



PSYCHOLOGICAL CONSEQUENCES OF SEXUAL ABUSE; TRAUMA, AND ITS LEGAL AWAKENING*

Abstract

Rape—the most gruesome act of assault—has, shockingly and unfortunately, become one of the most common crimes against women in India, with around 106 cases of rape being reported per day, 98% of which are found to be committed by someone known to the victim, while almost 71% of the cases go unreported as per the NCRB report of 2006. Laws against rape in the IPC have been amended quite a few times; however, they still fail to take into account the wider perspectives. The current laws possess many flaws, and are mostly concerned with offering a civil remedy where the entire emphasis is laid on prosecuting the criminal, and nearly negligible focus is given on proper psychological rehabilitation of the victim who has to go through a series of mental issues like depression, anxiety disorders, and Post Traumatic Stress Disorder, etc. because of the trauma. Rape or Sexual abuse is more emotional and mental than physical in nature. Four out of ten rape victims are minors, who suffer more because of the forceful silencing and resultant isolation.

Through this paper, the author aims to shed light on the grey areas associated with the post-traumatic consequences in case of rape, sexual mistreatment or abuse of women and children. The critical issues like shaming, stigmatisation, and secondary victimization are discussed; meanwhile, advocating for a legal awakening to provide compulsory mental health rehabilitation services to the victims of abuse.

Keywords: Sexual Abuse, Stigmatisation, Secondary Victimization, Psychological Disorders, Trauma

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Introduction

Over 118,537 cases of rape were pending at the courts when the year 2016 began, and at the end of the same year, the pending cases went up to 133,813, a surprising increase of 12.5%. For crimes against women overall, pending cases increased from 1,081,756 to 1,204,786. Going by these statistics, we are far from ensuring the safety of women and creating safe spaces for them to openly share about the experiences of abuse with fellow survivors. It becomes very important to address the unaddressed issue surrounding sexual abuse which haunts the victims for years, and in a number of cases, for lifetime. Psychological trauma, a direct consequence of the traumatising incident of abuse, is left completely unaddressed. And so are other psychological consequences which primarily include mental and psychological disorders like anxiety disorders, depression, eating & sleeping disorders, etc.

The nature of sexual abuse and the resultant trauma is psychological and emotional in nature, and, unfortunately, is ignored by the laws and the legal provisions associated with sexual abuse, harassment, misconduct and rape. There is a serious need to revise these laws, put in the required amendments, and ensure that the justice is delivered in such a manner that the primary focus shifts from prosecuting the criminal towards helping the victim.

Rape Laws in India

The history of Rape laws in India begins with Sections 375 and 376 of the Indian Penal Code (IPC) in 1860 (45 of 1860). In Accordance to the original provision in Section 375, a man will be said to have committed the offence of rape if he, except in the case hereinafter excepted, has sexual intercourse with a woman under the circumstances that falls under any of the given five descriptions: (1) Against the will of the woman, (2) Without the consent of the woman, (3) With the consent of the woman, when her consent has been obtained by putting her in fear of hurt or of death, (4) With the consent of the woman when the man knows that he is not her husband, and her consent is given because she is under the impression that he is another man to whom she is or

believes herself to be lawfully married, and (5) With or without the consent of the woman when she is under 16 years of age.¹

As per this definition, penetration is a ground sufficient enough to constitute the sexual intercourse necessary to the offence of rape. The exception to this section was that sexual intercourse by a man with his own wife, not under the age of 15, will not constitute rape.

Section 376 of the IPC states the punishment for rape. According to this Section, whoever commits the offence of rape shall be punished with imprisonment for life, or with imprisonment of either description for a term, extending upto 10 years, and shall also be liable to pay fine, unless the woman raped is his own wife and is not under 12 years of age, in which case he shall be punished with imprisonment of either description for a term, extending upto 2 years or with fine or both.

In 1983, an amendment was made and Section 376 (2), i.e., Custodial Rape, Section 376 (A), i.e., Marital Rape, and Section 376 (B to D), i.e., Sexual Intercourse not amounting to rape was added. Revealing the identity of a rape-victim was also made an offence as per the Criminal Law Amendment Act (1983). Through these amendments, new categories of offence of sexual intercourse by persons in custodial situation were introduced-such as superintendents of hospitals,

¹ 1. Against her will.

2. Without her consent.

3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

6. With or without her consent, when she is under eighteen years of age.

7. When she is unable to communicate consent.

remand homes, prisons, and police officials-with women in their custody. Punishment in the cases of gang rape or custodial rape amounts to a minimum sentence of 10 years.

According to the Supreme Court's verdict of 2012, rape trials should end within 2 months as stipulated under law. As provided under Section 309 of the Criminal Procedure Code, every inquiry or trial the proceedings should be held as expeditiously as possible and once the examination of witnesses starts, the same is to be continued on a day-to-day basis till all the witnesses get examined.

Our law bestows an absolute immunity on the husband in respect to his wife, solely on the basis of their marital relation. It might be a nonconsensual act of violent perversion by a husband against the wife where she is physically and sexually abused, but even then no action is taken. Marital rape is a common scenario in the Indian society. Article 2 of the Declaration of the Elimination of Violence against Women² covers marital rape in the definition of violence against women.

Current Legal Position

The definition of rape (Section 375 IPC) was criticized for excluding oral sex, sodomy, and penetration by foreign objects from their definition of rape and was considered to be inconsistent with constitutional provisions, natural justice, and equity. It was crucial to make sure that sexual penetration, not just penile penetration, but also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight gets included within the ambit of rape.

In reference to the recommendations of the Law Commission and the growing protest from the general public in response to gang-rape of a Delhi girl in December 2012, the Criminal Law (Amendment) Bill, 2013 was introduced by the Indian Parliament, which was passed by both the houses in March and received President's assent in April 2013. The Bill provided for amendments in Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure on laws related to sexual offences.

Now according to the offence of rape under Section 375 of IPC, both penile and non-penile insertion into bodily orifices of a woman by a man will constitute an offence. The definition is

² Declaration on the Elimination of Violence against Women. General Assembly Resolution 48/104. of 20 December 1993 (visited on 10th January, 2019).

broadly explained in some aspects, with acts like penetration of penis, or any object(s) or any part(s) of body to any extent, into the vagina, urethra, mouth, or anus of a woman or making her to do the same with another person or applying of mouth to sexual organs without the consent or will of the woman constitutes the offence of rape.³

The section has also clarified that penetration means penetration to any extent and lack of physical resistance is immaterial for it to constituting an offence. Except in certain aggravated situations, the punishment will be imprisonment for a minimum of 7 years which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term not be less than 10 years extending upto imprisonment for life, and shall also be liable to fine.

Section 376A has been recently added in the IPC which states that if a person committing the offence of sexual assault, inflicts an injury which leads to the death of the person or causes the person to be in a persistent vegetative state, then that person shall be punished with rigorous imprisonment for a term not less than 20 years extending upto imprisonment for life, which shall mean the remainder of that person's natural life, or with death. In case of a gang rape, persons involved, regardless of their gender, shall be punished with rigorous imprisonment for a term not less than 20 years, but which may extend to life and shall also be liable to pay compensation to the victim reasonable enough to meet the medical expenses and rehabilitation of the victim.

Certain changes have also been introduced in the Criminal Procedure Code and the Indian Evidence Act, like the recording of statement of the victim was made easier, character of the victim is now irrelevant for consideration, the court presumes the absence of consent where sexual intercourse is proved and the victim states in the court that there has been no consent, etc.

³375-A man is said to commit “rape” if he—

1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the seven descriptions

The age of consent has been increased to 18 years, which implies that any sexual activity, irrespective of presence of consent with a woman below the age of 18, will constitute statutory rape.

A Study of Survivors of Sexual Abuse

A study was conducted to reach out to and attract responses from sexual abuse survivors to find out the possible complex issues, details, and grey areas associated with post-traumatic experiences of sexual abuse, and to support or oppose the points and issues raised by this paper.

Methodology

The study was conducted using a questionnaire designed specifically for the study, and taking responses anonymously; meanwhile, not storing any confidential information or personal details regarding the identity of the participants. The questions were kept sensitive, and were not aimed at making the respondents feel uncomfortable in any manner. It asked questions as Did the victims share about the incident with someone, did they have to face stigmatisation upon people finding out, did they consult a therapist then or later in life, and what are the mental and psychological disorders that they had to suffer from as a direct or indirect result of the abuse. The study attracted responses from nearly 60 participants, all of whom were survivors of sexual abuse or misconduct, out of which 10 responses were removed during the analysis of the observations for their intentional biases in the answers. A total of 50 responses were later analysed to make the observations listed below.

Data Obtained

Most of the respondents fell between the age of 17 and 25, with almost 50% respondents being 20 - 21 years olds. Out of the 50 respondents, 76% survivors were females, 20% survivors were males, and 4% preferred to not specify their gender. Out of the 76% female survivors, almost 60% were abused before the age of 10, and 30% between 10 - 14 years of age. Out of the 20% male survivors, almost 12% were abused before the age of 10, and 6% between 10 - 14 years of age. In 50% of the total cases (responses), the abuser was a family member or a direct relative, and in 25% of the cases, the abuser was known to the victim or victim's family in some way, while in the rest 25% of cases, the abuser was a total stranger to the victim. 60% of the victims from the study happened

to open about the abuse to someone. 70% of those who shared about the incident to someone received a positive response, considering they only opened up to people they trusted like family & friends, while the rest 30% were either stigmatised or received an unexpected and non-supportive response. 100% of the respondents did not see a psychologist or a therapist back then due to certain reasons. 84% of the respondents could not seek the help of a mental health professional or social worker later in life as well. 75% of those who consulted a concerned professional for psychological therapeutic care reported being benefitted. On being asked to mark the psychological or mental disorders that were a direct or indirect consequence of the horrific incident of abuse, if any, the majority of the respondents admitted to having suffered or being suffering from anxiety disorders (60% of the respondents), sleep disorders (30% of the respondents), depression (30% of the respondents), eating disorders (24% of the respondents), followed by severe confidence and self-esteem issues, borderline personality disorder, self-harming tendency, and suicidal thoughts. In a shocking response, one respondent admitted to attempting to commit suicide thrice. Though most of the respondents admitted to being suffering from anxiety disorders, with Post Traumatic Stress Disorder (PTSD) topping the list, most of them have not been clearly and accurately diagnosed with PTSD clinically which is because of them not being able to seek psychological support. Around 60% of the survivors are not over the trauma yet, despite the fact that 70% of the survivors were abused almost 10 - 12 years ago. On being asked about their trauma coping or management strategies, unfortunately, most of the survivors are having to rely on time, memory blocking, and safe spaces to open about it, while some of the survivors are still trying to help themselves via therapy and medications, but are not very optimistic about being healed completely. Unsurprisingly, 96% of the respondents support the point raised by this paper to have legal provisions to provide, compulsory, proper and free mental health care and psychological rehabilitation to the victims of sexual abuse, misconduct and rape.

Observations

A striking number of critical and robust observations can be made from the data obtained by the aforementioned study. 1 in every 5 victims of abuse is a male, forcing us to address the incompetency of the sexual harassment laws listed under Section 354A⁴ which are focused only at protecting the women. Most of the respondents reported to being abused as kids, reinforcing the

⁴ <https://devgan.in/ipc/section/354A/> (visited on 10th January, 2019).

fact that children are more vulnerable to sexual abuse and harassment than adults. Survivors reported to face the wrath of societal stigma upon people finding out about the incident. None of the victims could seek psychological or therapeutic help after the incident, which later led to further conditioning of the trauma, and worsening of the psychological and mental well-being of the victims. The observations also highlight the inability of the survivors to seek psychological support later in life which can be credited to various factors like economical barriers, stigma associated with mental illness, fear of secondary victimization, and the poor state of mental healthcare infrastructure in the country. All of the respondents reported to being suffering from or having suffered from at least one psychological or mental disorder as a result of the traumatic experience of abuse, emphasising the fact that the effects of sexual abuse, harassment, misconduct or rape are more emotional and psychological in nature than physical, and hence need to be addressed that way only.

Critical Issues Influencing the Psychological and Social Well-Being of the Victims of Abuse

Stigmatisation

Stigma — a mark or badge of shame, as translated by google — has a very critical place in the discussion surrounding sexual abuse. The contemporary society around us, despite many progressive thoughts, tends to associate stigma with almost everything. Mental illness is stigmatised and, in fact, considered a taboo subject. HIV-AIDS patients have to face the wrath of stigmatisation. Sexual minorities have to suffer because of the same. And so does a victim of sexual abuse, misconduct or rape. The impact of Stigma here, as in the case of mental illness, is twofold;⁵ one is the public stigma, which is basically the reaction that the general population has to people who have been the victims of sexual abuse or rape, and the second is the self-stigma which is heavily influenced by the public stigma, and can be defined as the prejudice that the victims turn against themselves. The societal reaction forces the victims into believing that they're to be blamed for what happened to them. The society doesn't just stop at stigmatising the victims, but in fact goes as far as to shame them. So, the victims have to face one more abuse, which is, somehow, far worse than the physical torture that they were subjected to. Women are slut-shamed for dressing in a certain way or material, for being friends with the opposite gender, for staying

⁵ Corrigan PW, Watson AC. Understanding the impact of stigma on people with mental illness. *World Psychiatry*. 2002;1(1):16-20.

out of the house for personal chores, for partying, and a lot more illogical reasons that people give out there to justify their misogynistic and patriarchal assumptions and beliefs. People even go as far as to accuse the victims of probably showing certain seductive & shameful gestures, and hence inviting the potential abuser themselves.

The anticipation of stigma forces the victims of sexual abuse and rape to stay quiet, and in many cases, bear the abuse for a longer period of time because of the potential threats of the abuser. The fear of public stigma forces young female survivors to opt out of school, to stop stepping out of the house. The family, fearing shame or dishonour, turns to hiding and being quiet, instead of going ahead to file a case against the sexual offenders. Victims are forced to choose not to tell about the abuse to even their parents, who in turn, after knowing, choose to shut the voice of their children for the sake of the family's name and honour.

Stigma intensifies the trauma of the sexual abuse or rape, and makes it even harder for the victim to deal with it emotionally and mentally. The victims — already suffering from Post Traumatic Stress Disorder, anxiety disorders, and depression among other psychological issues, which arose as a result of the traumatic incident of abuse — become more prone to self-harming and suicidal thoughts. And, as a result, a double layer of stigma — one associated with the sexual abuse, and another with mental illnesses — ends up pressurising the victim, and making mental and emotional recovery harder. In a majority of cases, rape survivors tend to attempt committing suicide because of the same. Not only the access to a therapist or a psychologist for help but also the access to social contacts in general is hindered by the stigma. The society actually abuses the victims once again instead of offering support and help. The stigma, too, adds up-to post-traumatic psychological consequences of sexual abuse, and intensifies the severity of mental disorders, hence blocking the hope of recovery from the trauma.

Stigma can also be held accountable for victims not considering to report the case, as most of the cases of sexual abuse and rape go unreported, despite the victims knowing the identity of their abusers. The fear of people getting to know about it and the social consequences that the victim and her family might face keep the victim quiet, shut, and isolated for years.

Intersectionality comes into play here as well; a young trans girl belonging to a marginalised section of the society will be more prone to be a victim of sexual abuse, and eventually, will be stigmatised and shamed the most; meanwhile, blaming her and her fate for the same. At times, those blaming the victim are not limited to the general public around, shockingly, even professionals — who are supposed to provide care to the victims in the first place — end up expressing behaviours that are aimed at accusing the victim of inviting the wrath upon her/himself. One's social prejudices, beliefs, and stereotypes force one to do something as immoral as this.

Secondary Victimization

Secondary Victimization refers to behaviours and attitudes of social service providers that are “victim blaming” and insensitive.⁶ Such behaviours and attitudes end up traumatising the victim even more. When the social service provider, a therapist for example, tries to judge the victim's experience on the scale of morality and purity, and impose his/her opinions and beliefs on the victim seeking help from the aforementioned professional, things start falling out of place. As a result of which, the survivors lose their last hope, and end up deciding to not get treated for their mental well-being. In the majority of the cases, the method of practice used by the professionals happens to be unprofessional or psychologically harmful to the victim/patient. The clinician fails to consider the mental state of the patient, ignores the trauma, and disregards the victims' needs, and hence, ends up violating the basic ethics that he/she pledged for. The impact of secondary victimization on the psychological state of the victim is so severe that it is sometimes called “the second rape” or “the second assault” as the disregarded of the victims' needs by the concerned professional or care-provider so closely mimics the traumatic experience of the abuse at the hands of their abuser.⁷

In a study conducted by Rebecca Campbell and Sheela Raja, of the University of Illinois at Chicago, published in *Violence and Victims*, V. 14 (3), 1999, to analyse the secondary

⁶ <https://mainweb-v.musc.edu/vawprevention/research/victimrape.shtml> (visited on 10th January, 2019).

⁷ <https://mainweb-v.musc.edu/vawprevention/research/victimrape.shtml> (visited on 10th January, 2019).

victimisation of rape victims by taking insights from mental health professionals who treat survivors of violence, following profound and shocking observations were made:⁸

- a) Eighty-one percent of the study participants commented that the legal system's treatment of rape victims is psychologically detrimental.
- b) Eighty-nine percent of the study participants agreed that the medical post-rape exam was traumatising for rape survivors.

Legal Awakening of Trauma

Trauma resulting from the incidents of sexual abuse, misconduct or rape should be paid the most attention to. However, in reality, the entire legal system is focused at confirming whether the rape or sexual abuse took place, and prosecuting the criminal as per the IPC in case of admitting to having or found to have committed the crime. While, on the other hand, the sufferer, the victim, the one who faced the wrath of the heinous crime is not paid attention to at all. In cases of child or human trafficking, the rescued survivors are rehabilitated to women protection and care homes, but no law or provision addresses the need of the psychological rehabilitation. In a shocking turn of events, most of the times, the rehabilitated survivors have to face abuse once again behind the closed doors of the care homes, in the hands of the monstrous caretakers. The psychological trauma, which should be addressed and dealt with right after the incident has taken place, to provide a helping hand and support to the victim to enable him/her to cope with it and live a dignified life, is completely ignored in real. The rape victims end up choosing to end their lives only because of the psychological trauma, and the societal reactions like stigmatisation to abuse or rape. The criminals or offenders gets to enjoy all the perks in life after getting done with his sentence, while the victims are forced to live with the trauma for their entire lives. There are many humanitarian organisations that have raised their voices supporting the ban on death penalty to rapists, citing it is the violation of the rapist's basic human rights, but no voices are raised in favour of the victim and his/her mental well being. Somewhere there's no infrastructure for psychological support or rehabilitation, and somewhere it's not financially or socially accessible. If there's one way to address this trauma, to cater to the needs of the survivors for basic psychological support,

⁸ Campbell, Rebecca & Raja, Sheela. (1999). Secondary Victimization of Rape Victims: Insights From Mental Health Professionals Who Treat Survivors of Violence. *Violence and victims*. 14. 261-75. 10.1891/0886-6708.14.3.261

and help them cope with the trauma or manage it to live a dignified life, it's to take the legal way ahead; legal way to provide basic, proper, free and compulsory mental healthcare and psychological rehabilitation support to the victims of sexual abuse; legal way to make sexual harassment laws gender neutral; legal way to ensure proper and ethical medical conduct while dealing with victims of abuse or rape to ensure that their rights are respected and protected. Addressing the trauma legally is far important and is the primary need of the hour to ensure justice before we debate the inefficiency of laws which has resulted in no fear of prosecution in the offenders and motivates them to commit such crimes. Legal provisions will also ensure that the mental healthcare services are accessible to all the victims irrespective of their financial or social status.

Conclusion

The law is not catering sufficiently to what exactly is needed to be done in the cases of sexual abuse, misconduct or rape. Amendments can be made, suggestions of various committees and reports which suggest inclusion of marital rape as a crime, making rape and sexual harassment laws gender neutral, etc, can be inculcated, and is not a far fetched dream. However, the focus of the legal system should be shifted towards addressing the trauma and helping the victims of sexual abuse or rape as soon as possible by using the already prevalent laws and provisions in the legal system. The judicial system needs to address the psychological consequences of sexual abuse and divert the focus towards the victim and his/her proper psychological rehabilitation.

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