

# GENDER-NEUTRAL RAPE LAWS: ADDRESSING THE LONG-STANDING CONUNDRUM IN INDIAN LAWS

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## ABSTRACT

The prevailing perception of rape laws predominantly revolves around male perpetrators and female victims, reflecting traditional gender norms and stereotypes. However, in recent years, the urgent need for a gender-neutral framework in addressing sexual offenses has gained significant attention. This paper aims to explore the complexities and potential implications of implementing gender-neutral rape laws in contemporary societies.

The first section reviews the historical context of rape legislation, illustrating its gender-biased roots and its impact on survivors of all genders. Subsequently, the paper analyzes the evolving societal understanding of gender, dismantling the binary perspectives and acknowledging the experiences of individuals beyond the male-female spectrum. The role of gender neutrality in fostering inclusivity, breaking stereotypes, and promoting equal rights is emphasized. Drawing upon case studies and legal analyses from diverse jurisdictions, the paper highlights the challenges faced when transitioning towards a gender-neutral approach to rape laws. Issues such as victim-blaming, cultural resistance, and the safeguarding of due process are examined, presenting a comprehensive view of the multifaceted obstacles.

Furthermore, the research delves into the potential benefits of gender neutrality in rape laws, including enhanced reporting and prosecution rates, increased protection for all survivors, and the establishment of a more just legal system. The paper also addresses concerns regarding false accusations and the importance of balanced measures to protect the rights of both accusers and the accused. While acknowledging the complexity of this transformation, the paper

ultimately advocates for an inclusive, gender-neutral approach that upholds the principles of equality and justice for all individuals, regardless of gender identity or expression.

## **INTRODUCTION**

Thomas Jefferson famously said, “*Nothing is so unequal as the equal treatment of unequal people.*”

Men are not included on the victim side of rape legislation; they are only included on the offender side, as is the case in India and most other developing or developed countries. In India, there is already a call for gender-neutral rape laws. Although the lack of such regulations has been acknowledged, no concrete action has been made, which makes it unfair to the excluded gender. Gender-neutral rape laws are inclusive of all genders; as a result, they do not restrict people's rights but increase them. The Legislation may take careful actions to bring about its execution.

The assumption that the victim can only be a woman is the fundamental foundation of Indian law. This leads to the presumption that the crime of rape is only a sexual act,<sup>i</sup> for the immediate gratification of the sexual desire of the perpetrator. However, there is an opposing viewpoint that claims the act encompasses acts of degrading behaviour as well as acts of desire as a means of establishing the superiority of a specific religion, caste, group, or class over the victim<sup>ii</sup> and can be seen as an act of power. In light of this, some individuals who adhere to traditional or patriarchal ideas believe that using sexual assault as a tool would allow them to demonstrate their authority over others. However, times have changed along with development. Even though our judicial system is based on the tenet of "innocent until proven guilty," under the rape laws, women are always assumed innocent unless proven guilty and men are deemed guilty until proven innocent.

The offense of rape in India is discussed in Section 375 of the Indian Penal Code (IPC)<sup>iii</sup>. It outlines the elements of rape and the associated penalties. The provision has undergone many amendments to offer harsher punishments for sexual transgressions. According to Section 375 of the Indian Penal Code (IPC), a man is considered to have committed "rape" if he forces a woman to have his penis inserted into her vagina, mouth, urethra, or anus or perform any such

act with him or another person.<sup>iv</sup> Various levels of consent are also covered in this section. However, it appears that the law demands female victims and presumes that the rapist in cases of rape is a man. Section 376 addresses rape as a crime. It outlines the elements of rape and the associated penalties. The provision has undergone many amendments to offer harsher punishments for sexual transgressions. After its amendment<sup>v</sup>, Section 114A<sup>vi</sup> of the Indian Evidence Act If a woman asserts that there was no consent, the law now presumes guilt and places the burden of proof on the perpetrator. Once more, it is assumed that women, regardless of their identity, are the only people who can be subjugated by those in positions of power. This point of view, however, is false.

Section 377, Indian Penal Code, bans all sexual actions that are "against the order of nature," that is, it makes it unlawful for anyone to participate in homosexual behaviour as well as oral and anal sex. It is a known fact that the Supreme Court ruled against this statute as unconstitutional in the case of *Navej Singh Johar v. UOI*<sup>vii</sup> in 2018. It now addresses nonconsensual sex between two men. However, one would wonder why such circumstance does not fall within the definition of rape. This helped men in a certain way regarding their choice but they are still denied the same rights and freedoms that others take for granted.

Men and members of the transgender community are seldom the victims of rape, but it does not mean that they are not entitled to equality. Approximately 77 nations have tackled the matter legally and passed gender-neutral legislation. However, the idea of gender-neutral laws has consistently been rejected by the Indian Parliament.<sup>viii</sup> On one hand, certain nations are progressing in the direction of gender equality, while in India, gender disparity is a problem at every stage. In 2013, the Justice Verma committee<sup>ix</sup> was established with the proposal that victimisation under section 375 of the IPC must be gender inclusive and can involve anybody, including transgender people. The 172nd Law Commission<sup>x</sup> of India had the same opinion. Some social conservatives and women are opposed to gender neutrality because they believe it to be anti-woman and a retaliation to feminism.<sup>xi</sup>

## **EVOLUTION OF GENDER-SPECIFIC RAPE LAWS IN INDIA**

It is empirical to chart the history of sexual assault in India from the 1870s to the present. Women have been organising as a group for years to change the definition of rape in India to

combat sexual abuse there. In the 1860s, while the IPC was being drafted, "rape" was first referenced in the Indian legal system. But up until 2004, the only legal definition of rape was the penile-vaginal one.<sup>xii</sup>

In 1972, the Mathura Rape Case<sup>xiii</sup> shook the whole country. A young tribal girl was sexually abused by two police officers inside the police station in Maharashtra while she was being detained there. In India, this episode is today regarded as one of the most notorious custodial rape instances. She filed a rape lawsuit against these two officers under pressure from her family, and the matter ultimately reached the Supreme Court. In this case, the SC maintained that the victim didn't even raise an alarm during the rape and showed no outward indications of pain or struggle on her body since it is likely that she was accustomed to having sex and may have invited the police to have sex with her. After it was determined that the victim was not a virgin, the court decided that voluntary intercourse instead of rape had taken place.

Following this case in 1979, four academicians sent the chief justice of India an open letter<sup>xiv</sup> of complaint and several other protests followed around the nation. They all contended that the lady should be required to provide evidence that the sex was not consent-based. As a result, the term "Custodial rape" was added to the definition of rape. The amendment also forbids "character assassination" of rape victims in court and states that the identity of the victim shall not be made public. This resulted in several changes to the history of rape legislation. The criminal law amendment, of 1983<sup>xv</sup> was the consequence of the Mathura rape case.

The Nirbhaya rape case<sup>xvi</sup> was also demonstrated to be bringing about substantial changes in the history of rape legislation. It shook the whole nation, drawing attention to women's safety and calling for harsher rape sentences for traditional perpetrators. In December 2012, the Justice J.S. Verma Committee was established in light of the aforementioned occurrence. This committee's task was to draught criminal legislation revisions that would ensure quick trials and harsh penalties for anybody found guilty of sexual assault against women. The report's advice, which was provided on January 23, 2013, mostly concentrated on rape and sexual assault. The Committee also discussed creating gender-neutral rape legislation in its conclusion and recommendation, noting that sexual assault against males, gays, and transgender people is a reality that the law must recognise. However, the prevailing context at the time persuaded the government to maintain the law's gender-specific character, and the Criminal Law (Amendment) Act, 2013, was approved as such. It amends the Indian Penal Code to include

previously unheard-of provisions that make stalking and sexual voyeurism offences and alters the law to protect individuals' privacy. Further, the Criminal law amendment 2018<sup>xvii</sup> was the result of two unfortunate rape

cases, one in 2017 at Unnao, Uttar Pradesh<sup>xviii</sup> and one in 2018 at Kathua, Jammu and Kashmir<sup>xix</sup>. It made a lot of amendments to the Criminal Legislation, however, one of the most notable amendments is the increment of Punishment for rape under section 376 from 7 years to 10 years.

Rajya Sabha member, KTS Tulsi submitted a private member bill in 2019 intending to amend the current Indian Penal Code's provisions. The Bill is termed the Criminal Law (Amendment) Bill, 2019. It suggests adding criminal penalties for sexual offences against males and transgender people, but it does not stop there. It strives to penalise criminals regardless of their gender or sexual orientation. Additionally, it shows how the narrow application of such rules harms victims of other sexual orientations since it makes it impossible for them to recognise their victimisation<sup>xx</sup>. However, this measure has not yet become an act and is still pending in the parliament.

#### ***Study: Criminal Law (Amendment) Bill, 2019***

On July 12, 2019, KTS Tulsi, a member of parliament at the time, introduced the Criminal Law (Amendment) Bill, 2019<sup>xxi</sup>, in the Rajya Sabha. It was a private member's bill. The bill suggests making rape legislation gender-neutral, a notion that has also been put out in the past. The Indian Constitution's guarantees of equality and the right to life serve as the foundation for the bill's suggestions. It refers to the earlier Law Commission report and amendment law that covered gender neutrality. The proposal places a strong emphasis on changing the law in a way that will protect individuals of both sexes, people of all genders, and people of all sexual orientations while also enabling them to receive adequate restitution and justice.

The following are the key revisions that have been suggested for the Indian Penal Code, 1860<sup>xxii</sup>:

- i. Sections 8 and 10, which define "gender," "man," and "woman," respectively, to include the term "transgender," and to incorporate Section 8A, which defines modesty in a way that is suitable for all genders,

- ii. Section 354 should be repealed and replaced with a new rule that makes assault and the use of physical force intended to violate modesty gender-neutral.
- iii. The terminology used in Section 354A's definition of sexual harassment should be made gender-neutral, utilising words like "anyone" and "any individual" in place of gender-specific terms.
- iv. A new clause will be introduced to Section 354B that refers to the offence of assault or use of criminal force with the purpose to disrobe as occurring to "any person" rather than only "women."
- v. Similar gender-neutral versions of Sections 354 C and D's definitions of voyeurism and stalking have been suggested.
- vi. The measure also proposes to replace the terms "man" and "woman" in the definition of rape found in Section 375 with the word "any person." This is a significant shift. This will broaden the definition's scope and give males and transgender people the same protection. The sections of Sections 376 C and 376 D concerning "gang rape" and "rape by a person in authority" have also been subjected to similar proposed revisions.
- vii. The proposal suggests adding a new clause that will address sexual assault. According to Section 375A of the legislation, sexual assault includes "any non-consensual act of groping another person's genital area or the use of words or acts that create fear of an unwelcome sexual risk". The recommended penalty is harsh imprisonment that might last up to three years, a fine, or both.

Other than this, the pertinent Sections of the Indian Evidence Act of 1872 and the Code of Criminal Procedure, of 1873, have been suggested for some revisions too. Additionally, it cites the notable case, *Criminal Justice Society v. Union of India & Ors.*<sup>xxiii</sup> to support its justification for the proposition. In its ruling, the Supreme Court noted that the petitioner's request for gender-neutral rape statutes had substance and voiced its opinion that Parliament should take a similar step.

Last but not least, given that India is a member to the 1948 Universal Declaration of Human Rights<sup>xxiv</sup>, it is crucial that Parliament modify the current criminal legislation to make it gender-neutral in order to give effect to all of the foregoing, which safeguards human rights to equality and provides protection against discrimination.

## **ARGUMENTS IN FAVOUR OF GENDER-NEUTRAL RAPE LEGISLATION**

In order for rape laws to be considered "gender neutral," they must acknowledge that rape may be perpetrated by, as well as against, both men and women, as well as transgender people. Current theories on the dynamics, nature, and consequences of both non-penetrative and penetrative sexual activities are compatible with this. Based on this definition, the crime of rape must only be viewed and understood as an act that breaches the victim's human rights. However, this view would be at odds with the widespread gender-specific rape legislation. If this Offense violates human rights, neither the penalty nor the protection should be based on the gender of those who do it. By virtue of being a human, everyone is entitled to core human rights including equality, life, personal liberty, and dignity. Therefore, irrespective of gender identity or expression, everyone has a right to it.<sup>xxv</sup>

This assertion is well supported by a wealth of data. According to the preamble of the Universal Declaration of Human Rights, the foundation of freedom, justice, and peace in the world is the inherent dignity and equal and inalienable rights of every member of the human family. No one is exempt from any of the freedoms guaranteed in this Declaration based on their gender or any other status, according to Article 2<sup>xxvi</sup> of the UDHR. Equal protection under the law is provided under Article 7<sup>xxvii</sup>. According to Article 8, for acts that violate their fundamental rights, which are protected by the constitution and the law, citizens have the legal right to seek adequate redress from competent national tribunals. These clauses are purposefully and intentionally gender-neutral so that it is clear that all people are given these rights without any distinction based on variables like sex or gender.

The aforementioned clauses represent formal equality rather than substantive equality. Formal equality emphasises uniformity of treatment, but substantive equality acknowledges that occasionally providing equal treatment necessitates treating a class of individuals differently. The practise and idea of human rights must take into account the justification for the way the government regulates sexuality through the legal system, notably the criminal code. Although sexual views and practises have changed dramatically over the past century in many countries, it can take some time for laws to catch up. Sex laws in particular are notoriously hard to reform.

***Constitutional Perspective:***

The fact that the Constitution calls for both formal and substantive equality suggests that the framers understood that if formal equality were enforced consistently, it would only serve to reinforce structural inequality already in place. In reality, India's equality law has long shown signs of legal equality's limitations, undercurrents, stubbornness, and possible reaction, and it exhibits a strong conviction that a more substantial idea of equality is required.

As per Article 14<sup>xxviii</sup>, “the State shall not refuse to any person inside Indian territory, either equality before the law or equal protection of the laws.” According to Article 15(1)<sup>xxix</sup>, the “State is not allowed to discriminate against someone on the basis of their race, caste, sex, place of birth, or any combination of these factors alone.” Article 15(3), nevertheless, it is clear that “nothing in this article should prevent the State from passing particular laws protecting women and children.”<sup>xxx</sup> This is how the concept of positive discrimination has been instilled under the Indian Constitution. Therefore, it specifically enables the State to provide for women and children in whatever way, including in contravention of the basic ban on discrimination against citizens on the grounds of gender, among many other things. To support the validity of Section 375 of the IPC, one would be tempted to cite Article 15. Article 15(3) may be seen as just permitting the state to offer women and children stronger standards of protection while still keeping its constitutional obligation to shield its citizens from human rights breaches, notwithstanding its intended to be ameliorative. In addition, in Indian criminal law, only the crime of rape, as defined by Section 375, is used to deal with extreme sexual assault cases that violate a victim's physical integrity in the lack of any other legal recourse. From this vantage point, it appears that there is a stronger argument for treating crimes of equal heinousness the same way than for making a distinction between penetration of the male and female bodies, regardless of the actor's sex.

In this respect, the State has a legal duty to see that the aforementioned obligations are upheld. It is commonly acknowledged that nations are obligated to make sure that human rights are upheld impartially inside their borders. A similar position was taken by the National Human Rights Commission of India, which stated in a ruling that it is the State's first and most important duty to defend each person's right to “life, liberty, equality, and dignity.” The State also has a duty to guard against any violation of fundamental rights, whether it occurs directly or indirectly due to carelessness or collusion.<sup>xxxi</sup>



The State is accountable for both the actions of its own agents and those of non-State entities who act inside its borders, according to human rights jurisprudence. The State is also liable for any inactivity that facilitates or encourages the violation of human rights. Given that Indian criminal law offers no alternative choice for equal seriousness, this raises serious questions about the legitimacy of gender specificity in rape legislation in India. So it would appear that the idea of gendered protection of the same is irreconcilable with a state's responsibility to ensure the protection of its citizens' fundamental human rights inside its borders.

***Evidence in Favour of Arguments:***

There is an assumption that people always perceive a male as the culprit and a woman as the victim, similar to how the IPC provides the public with the impression that only men can exercise authority since men are biologically meant to be stronger than women. Two elements, namely the victim and the offender, can be considered in the current framework of gender neutrality. It has previously been extensively explored how the existing judicial system incorrectly exclusively considers women as the victims of sexual offences. The number of rape cases involving males and transgender people is not officially recorded. The two reasons are as follows: first, it took until 2019 for the Apex Court to identify transgender people as belonging to the "third gender," and second, there is no statute that makes non-consensual or coerced sexual actions against males a crime.

The National Intimate Partner and Sexual Violence Survey, released in 2013 by the National Center for Injury Prevention and Control, Atlanta, Georgia, contained a section on victimisation by sexual orientation.<sup>xxxii</sup> In contrast to 54.8% of women and 16.6% of both men and women who had suffered sexual violence other than rape in their lifetimes, just 28.6% of heterosexual males reported having male attackers. Lesbians also reported having rape or other forms of physical abuse at a rate of 43.8%, with 67.4% of those lesbians believing that only women were to blame for the assault. An investigation conducted in 2008 by India's National Crime Record Bureau found that married males commit suicide at a rate of one every nine minutes, which is significantly higher than the rate for women.<sup>xxxiii</sup> These suicides are caused by societal and economic pressures.

These facts suggest two things: First off, the idea that women are physically unable to commit rape is disproved by the reality that women are also able to perpetrate any other type of sexual

offence against men. Due to the broad definition of rape in India, which does not limit it to penile-vaginal penetration, this argument was never persuasive. Second, women have the ability to assault other people sexually.

In the ruling of *Bodhisattwa v. Shubha Chakraborty*<sup>xxxiv</sup>, the Supreme Court despite the fact that it has been established custom that the crime of rape violates the fundamental rights of men and women to life, liberty, and the right to privacy, Indian rape laws continue to support the status quo and their stigmatised stereotype of masculinity, as a result of which men are expected to be independent so they cannot be sexually abused or exploited by women.

The subject of whether a female may be charged with gang rape was raised in the ancient but important judgement of *Priya Patel v. State of M.P. & Anr.*,<sup>xxxv</sup> which is addressed in this argument. The court gave a negative response and decided that a woman cannot commit rape. The judgement seems reasonable in light of the restricted application of Section 375, IPC at the time it was made, but since the passing of the Criminal Law (Amendment) Act of 2013, the landscape of rape law has undergone a significant transformation. However, it was important to talk about the issue because there hadn't been a recent ruling on it. Now that the legislation has changed and the aforementioned data has been revealed, it is plausible that women may also commit rapes against both men and women.

Sometimes, laws that are skewed in favour of women and a lack of a legal support system for men are the major causes of women fabricating rape accusations against men. Male rapes are frequent and regular, although they are seldom reported due to the stigma attached to them. The US Supreme Court observed that, rather than being a purposeful effort to advance legislative objectives, gender-specific law typically results from social assumptions.<sup>xxxvi</sup>

### ***Judicial Precedents:***

The Indian Judiciary and the Parliament have not yet given regard to the aforementioned gender neutrality in the rape statute, although, from a worldwide perspective, it is not unusual.

In the 1984 ruling of *People v. Liberta*, the Court of Appeals heard a challenge to the validity of Section 130.35 of the Penal Code of New York, it said that engaging in sexual activity with a woman when induced by another person constituted a first-degree rape on a man's part.<sup>xxxvii</sup> According to the defendant, the aforementioned language was not gender-neutral and violated

the constitutional principle of his equality before the law. The court decided that it did, in fact, breach the equal protection principle because the aforementioned rule only applies to a male brutally raping a woman, not the other way around. It would be better to have a gender-neutral regulation rather than one that exclusively exempts one gender because it doesn't happen often because it would be more effective.

The US Supreme Court ruled in another case, *Orr v. Orr*<sup>xxxviii</sup>, that a statute that places alimony duties solely on the husband and not the woman is unconstitutional as it disregards the principle of equal protection under the law.

In the 1994 court case *Nicholas Toonen v. Australia*<sup>xxxix</sup>, Two provisions of the Tasmanian penal code were challenged because they criminalised specific kinds of sexual activities between two men and violated the ICCPR<sup>xl</sup> paragraphs 2, 17, and 26. As the hearings continued, Tasmania acknowledged that one of the aforementioned laws did differentiate based on sex as it forbade solely male-on-male sexual activity. Even the court ruled that Articles 17 and 2 were violated by the provision. However, the state's concession is sufficient to back up the claim that rape laws should be gender-neutral.

Instead of asserting that gender-specific rape legislation and definitions are per se unconstitutional, these rulings are being mentioned to highlight the fact that the state is responsible for ensuring that safeguarding human rights of everyone must be a consideration when it is drafting its laws. Human rights and the principles of gender justice are incompatible when human rights are only partially protected based on the sex and gender of the perpetrator or the victim.

## **IS INDIA READY?**

Even though it sounds like a great idea, gender neutrality cannot be fully adopted in the Indian setting. When we consider such a situation, several difficulties do arise. The Supreme Court also rejected a PIL that sought to gender-neutralize legislation addressing rape, sexual harassment, stalking, voyeurism, sexual assault, etc., describing it as an "imaginative petition" for the modern world. It is crucial to examine the issues preventing India from enacting gender-neutral laws.

It is regrettable but true that women are regarded as the most vulnerable group in India. In India, there are numerous instances of discrimination, crimes, torture, assault, etc. against women. We do not deny that men and transgender people experience prejudice and are the target of crimes, but data indicate that females are disproportionately affected. It becomes extremely necessary to defend their rights, and if they need particular legislation favouring them along the way, that should be permitted.

Additionally, India has traditionally been a country ruled by men, and the populace does tend to have a rather patriarchal outlook. Most males do possess greater political, economic, and physical power, and some abuse that authority to harm women via acts of violence, rape, stalking, and other forms of voyeurism. Men have also been known to conduct crimes against some women out of passion and hatred for them. Therefore, we cannot just assume that women are no longer at risk and naively propose gender-neutral rules on the pretext that some females could abuse them. We cannot avoid the potential that many false cases will also be brought up against women if we implement gender-neutral rules and it is also possible that males start reporting incidents of abuse by women or by men. There will be a large number of women inmates awaiting trial who, in such cases, would either lack the resources to fund their defence or support from family and friends.

Men and women experience sexual assault in different ways. Particularly for women, several stigmas make it very difficult for them to even bring legal action against the wrongdoers since, frequently, they are not only discriminated against but also have their fault sought after. The different premises that are developed when a woman contacts some authority to file a case include: she must be wearing something exposing, she must have been out at the improper hours of the evening, she must be a slut, she might have been given her consent, why she is not emotional, etc. This merely places responsibility on the victim. The incredibly unsuitable two-finger test makes things worse.

In India, there has never even been a single instance of female-to-male rape. No guy, other than a kid, would approach the police and report having been sexually attacked by a woman. He would be ridiculed. Additionally, a clause in the POSCO Act 2013<sup>xli</sup> already shields men under the age of 18 from sexual offences.

## INTERNATIONAL GENDER-NEUTRAL LEGISLATION

### *United Kingdom:*

The Criminal Justice and Public Order Act of 1994's<sup>xlii</sup> Section 142 acknowledges man-on-man rape, but only as long as the perpetrator is a male. The definition states that it is unlawful for a man to rape a woman or another male. As a result, although addressing male rape, it does not fully acknowledge gender neutrality. Rape is defined as the invasion of another person's vagina, anus, or mouth by their penis under the Sexual Offences Act of 2003<sup>xliii</sup>. It is obvious that it does not consider solely women as rape victims, but rather, it treats males as those who commit sexual offences against both men and women.

### *United States of America:*

The Uniform Crime Reporting (UCR)<sup>xliv</sup> Program's definition of rape was modified by the Federal Bureau of Investigation (FBI), USA, in 2013. The revised definition reads, "Penetration, however small, of the vagina or anus with any body part or object, or oral penetration by a third party's sex organ, without the victim's agreement." This new definition recognises rape as penetration by any object or bodily part and encompasses both men and women. For statistical purposes, this has widened the scope because information may now be collected without regard to gender, penetration by objects will now be considered rape, and sexual offences when no force was used but the victim was drugged and then raped will also be covered.<sup>xlv</sup>

### *Canada:*

The term "rape" is not used in the Canadian Criminal Code<sup>xlvi</sup>; instead, the code under Section 271 defines "sexual assault." Since "everyone" is used instead of "man" or "woman," the offence is gender-neutral. The term does not refer to "penetration," either by a body component or by an object. Additionally, it establishes penalties for severe sexual assault and makes it unlawful to commit sexual assault while using a weapon or by having the complainant fear hurting a third person.<sup>xlvii</sup> The Code also defines "Sexual interference" as an offence under Section 151. The law is gender neutral since it prohibits "any individual" from having physical contact with another person for sexual purposes by touching a body part or by using an object.

## **CONCLUSION AND RECOMMENDATIONS**

Gender equality indicates that men and women, as well as young girls and boys, have access to the same opportunities, resources, and safeguards. It does not mandate that women and men be treated equally or that girls and boys be treated the same. In a nation like ours, the importance and necessity of gender-specific laws must be recognised and emphasised since they contribute to the safety of women and the advancement of equality by assisting a highly underprivileged segment of society. For decades, women have struggled for their identities and rights; perhaps there will never be a conclusion to this fight. Their efforts were not in vain, though, since there has been a significant improvement in women's status compared to then. Numerous female activists have devoted their whole lives to enacting these reforms, some of whom have also perished in the process.

However, given the multiple examples mentioned in this article, it is impossible to deny the frequency of sexual offences against males and transgender people. The idea to make criminal law gender-neutral is ambitious given that rape against women is a very severe problem and that there has been an increase in the frequency of such occurrences. However, this should not be used as an excuse to minimise the suffering endured by males and transgender people.

Regardless of the victim's sex or gender, sexual offences in general and rape, in particular, include a traumatising violation of the victim's body. The fact that this horrible conduct is not criminalised when it is performed against men or transgender individuals makes this pain worse in the absence of gender-neutral rape laws. For a number of reasons, including their concern with being stigmatised as weak, queer, or feminine, men who have experienced sexual assault usually keep their experiences to themselves. Their own family members and acquaintances have occasionally disagreed with their statements. This leads to a highly disturbing scenario where male crime victims are frequently made fun of and helpless to stop it.

We also observe that despite activists' efforts to change the law in response to the predicament of women, which resulted in harsher penalties and more restrictive legislation, the law did not respond as it ought to have. If we take the same steps to protect male victims, there is a good chance that, even if the rules are changed to be more gender-neutral, the situation with male sexual assault will not shift significantly. Therefore, it is preferable to investigate this problem by acknowledging that Men are victims of ideology and adopting it into national legislation.

Reforming the laws and making them gender inclusive for victims can be one method to address this issue. It won't help to claim that India just has gender-neutral legislation. It would be beneficial to acknowledge that men may also be victims and to raise awareness of this, as well as to include transgender people as victims.

Given the current Indian scenario, it can be said that adopting legislation that specifies that the victim can be gender-neutral while the offender remains gender-specific is the primary recommendation. No matter how controversial this may sound, it can still be a stepping stone towards gender equality in criminal Laws, especially Rape Legislation.

Some other recommendations towards a gender-neutral legislative shift:

- It is essential to acknowledge that gender inequality affects both men and transgender persons at various points in their life. The Indian Evidence Act, the Code of Criminal Procedure, and the Indian Penal Code must all be adequately altered in order to make rape laws gender-neutral.
- It is strongly recommended that legislation be gender-neutral as some women abuse these provisions to their advantage and no rule can punish women in these sorts of circumstances. Additionally, the State can create an equal burden of proof rules to redress the power imbalances that exist between men and women in Indian culture. The rape of men and transgender individuals while they are in the custody of the police must also be considered, as must sectarian and caste violence.
- Protections must be implemented in rape cases to stop counter-allegations. The perpetrator of sexual harassment should get the proper punishment, but if it was utilised inappropriately, everyone should face an equally severe penalty. There must be clear evidence of rapes committed against men and transgender individuals.
- The JK Verma committee's advice to progressively modify the rape legislation while concealing the gender of the offender and encompassing all victims is the best course of action for India. The male and transgender communities are guaranteed protection from gay rape, while women are protected from allegations made in retaliation against them.
- Since each sort of sexual assault offender must be dealt with independently and gang rape can come from either side, male or female, our laws must take women into account

in situations of gang rape or abetment of rape. Transgender laws must be established independently, and they must be taught to police officers as part of their first training, to ensure that they are protected against sexual harassment everywhere they go and while reporting it to the police.

- Raising awareness is crucial to eradicating the stigma associated with male and transgender rape and cultivating empathy for such victims. In order for male and transgender students to speak out and report any such incidents, this crime must be made a priority in the classroom and at the university level.

In addition to this, other problems must be taken into account, such as whether the same law regulating the revelation of the identification of rape victims applies to males and transgender victims. It already exists in a hazy region, and if it is not resolved sooner, it might become troublesome. As well as substantial attention must be paid to problems like marital rape and domestic violence against males. Since we are a democracy, no one's rights must be ever infringed. The adventure has yet to even begin, therefore there is a long road ahead. Finally, it should be noted that following what many feminist groups, LGBT organisations, and other activists have said, laws should be gender-just as well as gender-sensitive.



## ENDNOTES

- <sup>i</sup> Narrain, A. (2013) Violation of Bodily Integrity The Delhi Rape Case among Others, Economic and Political weekly. <https://www.epw.in/journal/2013/11/commentary/violation-bodily-integrity.html> (Accessed: 23 July 2023).
- <sup>ii</sup> Id.
- <sup>iii</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.
- <sup>iv</sup> Id.
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