

Gender Neutrality in Sexual Offences: Need for Reform in Indian Rape Laws

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Abstract:

In India, the definition of rape is Gender Neutrality that is found primarily at Section 375 of the Indian Penal Code (IPC) where only men are defined as the rapists and only women are defined as the victims. This paper examines the limitations of this strategy in order to address the realities of sexual violence against men, transgender people and nonbinary people. Progressive judicial observations and recommendations on gender neutral laws by the Justice Verma Committee have been stalled for these same reasons. The paper analyses socio-legal impediments to gender neutrality (patriarchal norms and mitigations of the BNS-2023, which replaced the IPC), viewed from the standpoint of gender issues and the gender opposition to uniform terms of participation (Burger, 2019; Zarnowitz, 2016). This thesis advances the argument that gender neutral laws are indispensable for the preservation of constitutional principles of equality and justice, comparing to other jurisdictions like United States of America and United Kingdom, all through integrating case laws, statistical data and human rights perspectives while also proposing the importance of revising laws in order to remain inclusive in protecting against sexual violence while taking into consideration people's rights not to be subjected to accusations of sexual violence by victims.

Keywords: Gender Neutrality, Sexual Offences, Rape Laws, Indian Penal Code, Bharatiya Nyaya Sanhita, Equality, Transgender Rights, Legal Reform, Patriarchy, Human Rights

1. INTRODUCTION:

Although sexual violence is a widespread human rights violation that crosses gender lines, India's definition of rape in the legal system is binary and gender specific. According to Section 375 of IPC, and by its successor Section 63 of Bharatiya Nyaya Sanhita (BNS), rape is an offence committed on a woman by a man and its victims cannot be male, transgender, non-binary etc. The several realities of sexual violence in a fast-transforming society are not by any stretch of imagination attempted to be recognized by this exclusion, which as well impairs the constitutional guarantee of equality as per Article 14.

High profile cases, male rights organisations, transgender activists and legal scholars are all pushing to make rape laws gender neutral. But so far progress has been thwarted amid opposition from feminist groups and lawmakers who say women have already been historically oppressed and could be likely to face abuse. This paper reviews the same in the light of international models, judicial precedents and socio-legal obstacles to gender neutrality. Robust safeguards are in place to address the concerns over possible abuse, and it stresses that the need for inclusive laws in order to make sure that justice prevails for all victims.

Objectives:

- To evaluate the inadequacies of gender-specific anti-rape legislation in India.
- To investigate judicial and legislative efforts to attain gender neutrality.
- To make recommendations for modifications based on international best practices and constitutional principles.

2. THE BACKGROUND OF INDIAN RAPE LAWS

The Indian rape laws have been changed considerably because of judicial interventions and social upheavals. When the IPC was first passed in 1860, it stated that rape meant the unconsented penetration of the penis into the vagina. The Mathura rape case (1979) was a case that revealed systemic flaws in the system, processes of change were initiated in 1983 thereby bringing changes in the evidence rules and penalties to be meted out to the offenders of such crimes. The Nirbhaya gang rape case had prompted The Criminal Law (Amendment) Act, 2013 wherein there was a tightening of the rape definition, and severe penalties were imposed for non-penile penetration sex assault (2012).

Despite these changes, the law is still gender specific. An idea put in by the post Nirbhaya Justice Verma Committee was gender neutral law to ensure recognition of male and transgenders victims but that was also rejected for it was feared that that might erode protection to women. The 2023 BNS however maintained this gendered framework, such as eliminating clauses like Section 377, which did not afford very much to male victims to fall back upon. This section traces the evolution of rape legislations signposting how the idea of women centric approach has been upheld by legislative inertia and patriarchal norms.

KEY DEVELOPMENTS:

- Mathura Case (1979): Draw attention to victim-blaming and insufficient legal protections.
- Although the Nirbhaya Case (2012) preserved gender specificity, it resulted in more expansive definitions of rape.
- BNS 2023: Regressed on male victim protections by failing to implement gender neutrality.

3. LIMITATIONS OF GENDER-SPECIFIC LAWS

There are major gaps in addressing sexual violence because Indian rape laws are genderspecific:

- Exclusion of Male Victims: Despite proof of sexual violence in settings such as prisons, workplaces, or homes, men are not eligible to pursue justice as rape victims under Section 375 or Section 63. Silence and stigma are sustained when there is no legal recognition.
- Marginalisation of Transgender and Non-Binary Persons: Although *NALSA v. Union of India* (2014) recognised transgender people as a third gender, they are not specifically protected from rape. Compared to cisgender women, transgender people face less severe punishments for sexual offences under the Transgender Persons (Protection of Rights) Act, 2019.
- Reinforcement of Stereotypes: The law ignores cases of female perpetrators or same-sex violence, assuming that men are always the ones who commit crimes and women are always the victims. The intricacy of sexual dynamics is undermined by this binary framework.
- Constitutional Violations: The law violates Articles 14 (equality) and 15 (non-discrimination) of the Constitution by failing to provide equal protection to all genders.

STATISTICAL INSIGHTS:

Due to underreporting, there is a dearth of information on male and transgender victims; however, research indicates that non-female victims account for 10-15% of all cases of sexual violence worldwide.

Systemic neglect is evident in the National Crime Records Bureau's (NCRB) failure to monitor rape cases involving men or transgender individuals.

Case studies like **Sudesh Jhaku v. KCJ** (1996) are used in this section to demonstrate how the courts have acknowledged these gaps and the pressing need for reform.

4. JUDICIAL AND LEGISLATIVE EFFORTS TOWARD GENDER NEUTRALITY

Though progress is still uneven, gender neutrality has been occasionally addressed by Indian lawmakers and courts:

Judicial Observations:

Sudesh Jhaku v. KCJ (1996): The Delhi High Court recommended equal protections for male victims and referred the case to the Law Commission.

Sakshi v. Union of India (1999): Influenced the 172nd Law Commission Report by arguing for more expansive definitions of sexual assault.

Kerala High Court (2022): In order to handle cases of false promises involving female offenders, the Kerala High Court (2022) made the oral observation that Section 376 ought to be gender-neutral.

Legislative Proposals:

- 172nd Law Commission Report (2000): Suggested gender-neutral language and substituting "sexual assault" for "rape."
- Feminist organisations opposed the Justice Verma Committee's (2013) proposal to recognise victims who were male and transgender.
- Private Member's Bill (2019): KTS Tulsi's bill, which attempted to substitute "any person" for "man" and "woman," was not passed.
- A Public Interest Litigation (PIL) has been filed in the Delhi High Court (2024) as a result of the BNS's removal of Section 377, which has left male victims of non-consensual acts without any recourse.

This section assesses the reasons behind the failure of these initiatives, pointing to societal biases and political hesitancy, and emphasises the importance of activism in maintaining the discussion.

5. GLOBAL PERSPECTIVES ON GENDER-NEUTRAL LAWS

India can learn a lot from the gender-neutral rape laws that have been implemented in many nations:

Rape is defined as "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent" in the United States by the FBI's Uniform Crime Reporting program. All genders are covered by this, guaranteeing inclusive protections.

- **United Kingdom**: The Sexual Offences Act, 2003, covers both male and female perpetrators and victims of rape and sexual assault in a gender-neutral manner. Penalties for all types of penetration were equalised in the **R v. Ismail** case (1994).
- **Canada and Australia**: Both nations emphasise consent and bodily autonomy over gendered roles, using language that is gender-neutral.

Comparative Analysis :

These jurisdictions strike a balance between protections against abuse, like stringent standards for evidence and public awareness initiatives, and inclusivity.

They gather information on victims who are male and transgender, unlike India, which makes evidence-based policymaking possible.

This section makes the case that India can use comparable frameworks to address issues like high rates of violence against women and its own sociocultural context.

6. CHALLENGES AND CRITICISMS OF GENDER-NEUTRAL REFORMS

Gender-neutral legislation is opposed for a number of reasons:

The National Federation of Indian Women and other feminist organisations contend that gender neutrality may weaken protections for women, who experience disproportionate violence (89% of rape cases involve female victims, according to NCRB 2021).

- Risk of Misuse: Critics worry that men might file counter-complaints to harass female victims, making their trauma worse.
- Patriarchal Mindset: Acceptance of male or transgender victimisation is hampered by societal norms that see men as strong and women as weak.
- Legal and Procedural Gaps: The Code of Criminal Procedure and Evidence Act must be amended in order to implement gender-neutral laws, and judges and police must receive training.

COUNTERPARTS:

- Gender neutrality promotes justice for all while maintaining women's rights.
- Misuse can be reduced by measures like severe penalties for making false complaints.
- As demonstrated by global models, awareness campaigns have the power to dispel stereotypes.

This section analyses these issues critically and offers a fair solution by drawing on feminist and human rights viewpoints.

7. RECOMMENDATIONS FOR REFORM

India needs to implement extensive reforms in order to have gender-neutral rape laws:

1. Legislative Amendments: - In Section 63 of the BNS, substitute "person" for "man" and "woman."
Provide a more comprehensive definition of sexual assault that includes any type of unwanted contact or penetration.
Restore gender-neutral language to Section 377's provisions regarding non-consensual same-sex acts.
2. Judicial Guidelines: - Courts ought to issue orders requiring the gender-sensitive handling of cases involving victims who are male and transgender.
To guarantee prompt justice for all genders, fast-track courts for sexual offences should be established.
3. Institutional Measures: - Provide training on victim trauma and gender diversity to the judiciary and law enforcement.
Direct NCRB to gather information on victims who are male and transgender in order to inform policy.
4. Public Awareness: Start initiatives to de-stigmatize victimisation of men and transgender people.
Encourage consent education in workplaces and educational institutions.
5. Protections Against Abuse: As stated in Section 14 of the POSH Act, enforce severe sanctions for fabricated complaints.
Make sure the process is fair in order to shield real victims from accusations of retaliation.

These suggestions, which are consistent with constitutional and human rights principles, strike a balance between inclusivity and safeguards for women.

8. CONCLUSION:

Sexual violence is based on colonial and patriarchal interpretation and India's rape laws, rooted in colonial and patriarchal ideologies, have failed to address every element of sexual violence constituting systemic injustice, which is violation of Article 14 of equality. These laws narrowly define victims only as women and disregard the lived experiences of male, transgender, and non binary people who also have experienced sexual violence. Judicial observations, such as those in cases like *Anuj Garg v. The point* has been reiterated by Hotel Association (2008) for the need of gender neutral frameworks for equal rights. Further amplifying the call for change are activist advocacy which consist of campaigns by organizations such as the Naz Foundation. This also focuses on the fact that legal discourse does not include other than female victims. Examples from other countries, like Sweden's gender neutral rape laws and the Sexual Offences Act 2003 in England, show that it is possible for legislation to be both fair and protective of the victims and can be used as templates for

India. While valid for the potential misuse or dilution of women's protections under genderneutral laws, I believe that that concern is insurmountable. Targeted safeguards like egregious evidentiary standards, mandatory law enforcement sensitivity training and institutionalization of public awareness campaigns can reduce risks to other residents without compromising on equal justice. Addressing the dignity of all individuals beyond gender discriminations is a constitutional obligation beyond moral and legal debate. Bold legislative action is urgently required, and India's legal framework must be brought in line with the country's constitutional ethos and global human rights standards to ensure that justice is truly gender blind. This reform is not simply a matter of policy but a promise of society to be inclusive, equitable, and just. India has the power to develop progressive jurisprudence and create a society in which all victims will be heard and all perpetrators are accountable, and not just by the law, but also ethically. This paper calls for audacious legislative action to close this disparity and ensure that justice is in fact gender blind.

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