

SHIFTING PERSPECTIVES: THE EXIGENCY OF GENDER- NEUTRALITY IN INDIAN RAPE

LAWS

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Abstract

The Indian Penal Code has been in force in India's legal system for almost 160 years, but astonishingly, a few chronic flaws still plague the effectiveness of the ancient punishing legislation. Over the last few decades, India has seen a spike in requests to alter its long-standing laws and regulations to reflect current citizen perspectives and to meet society's current requirements. As a result, the government listened to the people and made some significant reforms to our socio-legal system, such as decriminalizing adultery, validating live-in partnerships, recognizing homosexuality, including the right to privacy as a fundamental right, and so on.

However, if we were to ascertain the pragmatic realities of identifying the concept of 'Gender Neutral' in India 's rape laws, as laid down under sections 375-376 of the Indian Penal Code, 1860, the canons of 'Equality' treasured in the Basic Structure of the constitution of India are not strictly adhered to. Despite the fact the idea of adding gender neutrality into rape laws has been considered in several suggestive studies and court precedents, no major progress has been made. Because India lacks comprehensive legislation to address male on male, female on male, transgender rapes, identifying the horrible crime of 'Rape' as a gender-neutral crime is critical. This is critical if the country is to evolve as a mature democracy with legal requirements of fairness, integrity, and impartiality.

KEYWORDS: Gender-Neutrality, rape, crime, equity, uprightness, impartiality.

Introduction:

Gender-neutrality is a belief that discrimination between men and women should be eliminated in both legislation and its execution. It attempts to provide equal rights for all citizens, regardless of gender, such as equal protection of, under the law equal compensation for equal effort, and so on. Its goal, from standpoint of Indian Rape Law, is to eliminate the gender based stereotype associated with rape in the Indian Legal Environment. Despite the fact that the definition of “Rape” under section 375 of the Indian Penal Code (1860) has been revised several times, it still corresponds to the traditional understanding of rape, in which the victims and perpetrators are invariably women and men, respectively. To believe that such a heinous crime is only done by men defies the truth of the assertion that “Men can be subjected to rape too.” Gender- neutrality may only be fully realized when all of its sub-dimensions are carefully catalogued and followed, namely:

- 1) Neutrality toward the victim
- 2) Neutrality toward the perpetrator
- 3) Neutrality in custodial, community, war, and conflict situation

History Of Rape Laws

Rape was never considered a crime against the victim in the beginning; rather, it was considered a criminal against property, and the property in question was women a who were meant to belong to their husbands or fathers. The word “rape” is derived from the latin word “reperere”, which means “to grasp or take anything,” implying property once again. For the crime, the spouses or fathers were compensated. If you raped a virgin, recompense was paid to the father, and the victims was married to a culprit, according to Hammurabi’s code, one of the earliest sets of rules known to a man. If the lady who was raped was married, she was considered an adulteress and would be sentenced to death alongside her rapist.

The Hebrews had similar laws, and they took the concept of an eye for an eye very seriously, therefore the victim’s father was allowed to rape the rapist’s wife as a punishment for rape. Not all laws, however, were terrible. Rape against women was recognized as a crime against the women in celtic law in re-British England, with a distinction drawn between no permission and being in a situation where you are unable to provide consent, such intoxication.

These rules, on the other hand, were the exception rather than the rule in the early rape laws. Rape did not become regarded as a crime against the victim until the 12th century. The statutes of Westminster, which were enacted in the 13th century, were one of the first to authorize the crown to prosecute rapists if the victim's family refused to cooperate. This was a watershed moment because rape was suddenly being recognized as a crime against the state as well as against the victim's family. Rape was first defined in the early 18th century in comparable terms to how it is defined today.

Evolution Of Rape Laws In India

For the first time, the International Criminal Court (ICC) defined rape in the 1940's. It was described as having sex against woman's will or permission, as well as consent obtained by putting the victim or anybody close to her in fear of death or harm. For the following 100 years or more, the definition of rape remained constant.

Then, following the Supreme Court's acquittal of the culprits in the Mathura Custodial rape case, the rape statutes underwent significant modifications. The term "custodial rape" was added to the definition of rape to refer to rapes perpetrated by police officers. The Indian Evidence Act of 1872, was amended to include 114A as a result of this. This new section applied to custodial rapes and implied a lack of consent in particular cases if the victim claimed so. The IPC was amended to include section 228A, which made it illegal to reveal the identities of victims of certain crimes, including rape. It also barred victim character assassination. Even though it was also illegal, character assassination did not entail cross examination.

The victim's sexual integrity was violated, and she was further further traumatized as a result. After a PIL petitioned the law commission to suggest modifications to our rape laws, the Supreme Court took notice. Section 155(4) of the Indian Evidence Act was amended as a result of this. Cross-examination of victims was disallowed after the modification.

Pocso Act

The national crime bureau reported a significant increase in child abuse cases between 2001 and 2011. Prior to this, the law regulating sexual offences against children was statutory rape clause, which made sexual intercourse with a kid under the age of 16 illegal regardless of permission. Because the perpetrator in the majority of incidents of child abuse is frequently someone close to the child, the POCSO (Protection of Children from Sexual Offences) Act of 2012 was enacted. The police were in charge of looking after the kid victim during the trial in these circumstances. The act was gender-neutral, recognizing other types of penetration in addition to peno-vaginal penetration. The act addressed child pornography, aiding and abetting child maltreatment, and sexual harassment of children.

Criminal Law (Amendment) Act, 2013

The criminal law (amendment) act, 2013, approved by the Lok Sabha on March 19, 2013, and the Rajya Sabha on March 21, 2013, amends the Indian Penal Code, Indian Evidence Act, and the Code of Criminal Procedure, 1973, to address laws relating to sexual offences. The bill was signed by the President on April 2, 2013, and it was deemed to take effect on February 3, 2013. It was originally an ordinance signed by India's President, Pranab Mukherjee, on 3 February 2013, in response to the 2012 Delhi gang rape case protests.

This incident received widespread international attention and was condemned by the United Nations Equity for Gender Equality ¹and Women, which urged the Indian government and Delhi to “do everything in their power to implement radical reforms and other measures to make women's lives safer and secure”.

The public, as well as other human rights organizations and women's organizations, had been calling for changes to the existing law dealing to sexual offences. For committed such a horrific crime, the accused deserved a harsher sentence.

“To ensure its effectiveness, the Act must be implemented with devoted human and financial resources, as well as clarity in duties and responsibilities,” Justice Verma said at a UN Women gathering. A law is only as good as the mechanisms and people who put it into effect. Mindsets and attitudes must shift if women are to be truly appreciated and valued in society”.

¹<https://www.lawctopus.com/academike/criminal-law-amendment/>

Reasons For The Enactment:

The national anger over the violent gang rape and subsequent death of a physiotherapy intern in India's capital city, New Delhi, was the driving force behind the passage of the Criminal Law (Amendment) Act, 2013, which attempted to reform the country's existing laws surrounding the sexual offences. The act is regarded as one of the most significant amendments to the current criminal laws, which include the Indian Penal Code, the code of Criminal Procedure, and the Indian Evidence Act.

Nirbhaya Case/2012 Delhi Gang Rape Case

A 23-year-old female physiotherapy intern was assaulted and gang raped in a private bus in which she was travelling with a male acquaintance on December 16, 2012 in Munirka, a neighborhood located in the southern portion of New Delhi. The victim died as a result of her injuries. The episode received enormous national and international attention, as well as strong condemnation, both in India and beyond. Following that, public protests in New Delhi against the Indian government and the Delhi government for failing to provide proper security for women erupted, with thousands of protestors clashing with security personnel. Similar demonstrations took place in major cities around the country, calling for harsher regulations and more expeditious justice.

Other facts of the case:

When the victim and her friend voiced their concerns about the bus's route to the destination, they were beaten. While the bus was underway, the woman was raped by all of the males, and her buddy was beaten unconscious. Both victims were pushed out of the moving bus by their attackers after being beaten and raped, and were left partially clothed on the side of the road. After receiving a call from a passerby, a PCR vehicle arrived on the scene. The injured were transported to Delhi's Safdarjung Hospital for treatment.

A medical examination of the woman revealed that she had been pierced by a blunt instrument, most likely a rod-like device, which had caused serious damage to the victim's internal organs. On police investigation, two blood-stained metal rods were retrieved from the bus, which medical personnel later proved to be the device used for penetration, causing major injuries to the victim's uterus, genitals, and abdomen.

The Delhi Police made arrests in the case within a day of the crime being committed, and all six offenders, including a minor were apprehended.

Consequences

After the gang-rape event, there were widespread demonstrations. There were protest movements both at home and abroad, all calling for tighter laws to prevent violence against women. Because of the awful nature of the crime committed, this occurrence gained a lot of attention. As a result of the statewide demonstrations, the Government of India established the Justice Verma Committee to recommend modifications to the existing legislation.

The Justice Verma Committee

On December 23, 2012, a three-member committee led by former chief Justice of the Supreme Court Justice J.S. Verma was formed to recommend changes to the criminal law that would allow criminals convicted of sexual assault against women to be tried quickly and receive harsher penalty. Justice Leila Seth, a former judge of the Delhi High Court, and Gopal Subramaniam, a former Solicitor General Of India, were the other members of the committee.

The committee urged the public in general, and eminent jurist, legal professionals, NGOs, women's groups and civil society in particular, to share their views, knowledge, and experience in proposing possible amendments to the criminal and other relevant laws to allow for faster investigation, prosecution, and trial, as well as enhanced punishment for criminals accused of sexual assault of an extreme nature against women.

Asifa Bano Rape Case

A group of men raped and killed an 8-year old girl named AsifaBano in the Kathua area of Jammu and Kashmir in January 2018. The main defendant was a priest from the temple where the rape took place. This terrible event sparked nationwide outraged and calls for tougher restrictions. This case was intensely politicized on communal lines against the backdrop of political upheavals in Jammu and Kashmir. As a result of this, the 2018 criminal amendment act was enacted, which primarily amended POCSO because the rape was committed against a kid. The statute made the death penalty available for rape of a juvenile under the age of 12 years old, with a minimum sentence of 20 years in prison. In the IPC, a

new section was included that dealt with rape against a Juvenile under the age of 16, with penalties ranging from 20 years to life imprisonment.

Need For Criminal Amendment Act, 2018

According to a research by the “Thomson Reuters Foundation”, sexual violence, human trafficking, child labor, underage marriage, and female foeticide make India the most dangerous country for women. In 2012, the National Record Crime Bureau (NRCB) ²documented 24,923 rape crimes across India, according to its annual report for the year 2013. The culprit was discovered to be a relative of the victim in 98 percent of the cases. Assault has a very low per capita rate and, as a rule, it goes unreported. However, the rape instances such as the Kathua rape case and the Unnao rape case sparked considered public anger. And a sense of censure leads to media attention and public protest in the name of justice. as a result of the increased willingness to disclose rape incidents, the Indian government has made revisions to the current penal legislation. As a result, criminal amendment act was absolutely necessary.

Features Of Criminal Amendment Act, 2018

This act makes significant reforms to our penal laws to protect girls from the horrible crime of rape. They are as follows:

- 1) Anyone who commits rape is sentenced to a minimum of 10 years in prison; previously, the minimum sentence was seven years.
- 2) Anyone who rapes a girl under the aged of 16 will be sentenced to a minimum of 20 years in prison.
- 3) If a prison rapes a girl under the age of 12, he or she will be sentenced to 20 years in prison, life in prison, or death penalty.
- 4) If the rape crime is committed against a girl under the age of 16, the accused shall not be given anticipatory bail.
- 5) Convicted persons are obligated to recompense the victim, with the money going toward the victim’s medical bills and rehabilitation. And the remuneration will be fair and equitable.

²https://blog.ipleaders.in/criminal-law-amendment-act-2018-2/#Criminal_Law_Amendment_Act_2018

- 6) If a police officer is found guilty of a rape, he or she will be sentenced to a minimum of 10 years in jail, regardless of where the crime occurred.
- 7) In the case of rape, the police are required to conclude the investigation within two months of the FIR being filed.
- 8) In the case of rape, the time limit for filing an appeal is six months. The law stipulates that anyone guilty of gang rape of a woman under the age of 16 will be sentenced to life in prison and fined.

Characterizing Rape: The Male Perpetrator Paradigm

To properly assess gender neutrality in rape legislation, it is necessary to first define the breadth of the crime and the impact it has on the victim. The Indian Penal Code (IPC), section 375, plainly states:

Rape- A man is said to have committed “Rape” if he has sexual intercourse with a woman under any of the six categories below, save in the situation subsequently excepted:

The definition is followed by sub-clauses that list the circumstances in which the crime of rape can be committed. The legal decisions on Indian rape laws reflect a relatively traditional understanding of rape, in which it is considered an assault not just on a woman’s body, but also on her modesty, chastity and honour.

However, the view point subtly rests on a patriarchal foundation, undermining the validity of arguments aimed at neutrality in terms of the victim’s gender, autonomy and bodily integrity.

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Unfortunately, the Indian Penal Code’s rape provision predetermines the gender of both the perpetrator and the victim, leaving little room for any kind of liberal interpretation. On the basis of sexual stigmatization, such a legislative requirement is not only arbitrary and ambiguous, but also unreasonable and discriminatory. The fact that only a man is capable of committing rape and only a woman can be a victim of the crime gives women, as well as other male perpetrators who target macho victims, an unfair advantage. Rape is considered an explicit patriarchal crime under Section 375 of the IPC, deriving from the outrageous misuse of masculine authority and privilege. However, as a rapidly developing nation with the

³Id.; Rafiq v. State of Uttar Pradesh, (1980) 4 SCC 262.

world's largest democracy, we must adopt our laws to meet the demands of an ever- changing society in order to meet the dynamic nature of the law.

Male-On-Male Rape

Navtej Singh Johar and Ors. V. Union of India ⁴The. Secretary Ministry of Law and Justice 2018 decriminalized section 377 of the Indian Penal Code (unnatural offences- 'homosexuality'), but there is still no widely available legal remedy to deal with the adult male to male rapes in India. While male child rape victims are protected under the Protection of Children from Sexual Offences (POSCO) Act of 2012, adult male rape victims are denied legal services or aid because the Indian Penal Code's judicial system is unprepared to deal with such crimes.

Male-male rapes, as well as female-female rapes in jails, are common, according to several studies, and the vast majority of such occurrences go undetected. Only around 1 in 10 male-male rapes is ever recorded⁵, according to American psychologist Sarah Crome.

Female-On-Male Rape

Female-on-male rapes have received far less attention than other forms of sexual assault. According to one research, 23.4 percent of women and 10.5 percent of males said they had been raped, while 6.6 percent of women and 10.5 percent of men said they had been the victims of attempted rape. ⁶

There has been no relevant background or official research data available in India to assist us in estimating the statistical frequency of such crimes. Unsurprisingly, even if a male rape victim attempts to file a legitimate FIR against a woman for rape, he is likely to be scoffed at by police personnel, and he may experience severe social rejection and emotional trauma. A victim of a crime is a victim regardless of caste, color, creed, race or sexual orientation. On the contrary, it is clear that male rape victims' colors and cries are nothing more than unspoken opinions that are never brought to justice. such implacable indifferences between genders eventually leads to the emergence of a society dominated by pseudo-feminism.

⁴(2018) 10 SCALE 386.

⁵<http://www.abc.net.au/worldtoday/stories/s244535.htm>.

⁶Martin S. Fiebert, References Examining Men as Victims of Women's Sexual Coercion, 4 Sexuality and Culture 81-88 (2000).

Transgender Rape Laws In India

The Gender-Equality Principles in rape legislation, neutrality encompasses justice beyond the two widely recognized genders; it also calls for the inclusion of transgender individuals. Currently, India lacks specialized rape laws for rapes of trans people, which is a surprise contradiction of the supreme court's historic verdict in the NALSA ⁷case in 2014, in which the SC took proper cognizance of the transgender community's rights and remedies.

On December 5, 2019, the Transgender Persons (Protection Of Rights) Act, 2019 went into effect, with the goal of elimination ostracism and prejudices towards transgender people and putting them on an equal footing in the eyes of the law. However, some essential legal elements relating to sexual offences against transgender people were left out of the act, and those glaring gaps have yet to be filled.

Furthermore, the 2019 Act has elements that, paradoxically, seek to foster rather than eliminate racial attitude. The Act's section 18(d) reads as follows:

18. Penalties and offences

Whoever- (d) harms or injures or endangers the life, safety, health, or well-being of a transgender person, whether mental or physical, or tends to do act such as physical abuse, sexual abuse, verbal and emotional abuse, or economic abuse shall be punished by imprisonment for a term not less than six months but not more than two years, as well as a fine.

The irony of this clause is that whereas a similar conduct against a woman could result in severe penalties, the same offence against a trans person's body and dignity is classified as a "petty offence". The insensitivity supports a "gender-specific edict" and is a vivid example of how our country's criminal legislation violates the principles of equality enshrined in the doctrine of our constitution's "Basic Structure"⁸. As a result, it is critical to identify the seriousness of sexual offences against transgender people and to treat such offences in accordance with the Indian Penal Code, 1860.

⁷National Legal Services Authority v. Union of India, AIR 2014 SC 1863.

⁸KesavanandaBharati v. State of Kerela, AIR 1973 SC 1461.

Gender Neutrality In Rape Law Vis A Vis Human Rights

The right to equal protection under the law is a cornerstone of basic human rights that applies to everyone, regardless of discriminatory bias. As a result, it is critical to state the argument that existing rape laws should be changed to be gender-neutral from human rights perspective.

The Supreme Court, in the cases of *Bodhisattwa. V. Shubhra Chakraborty* and *Narendra Kumar V. State (NCT of Delhi)*⁹, duly acknowledged the dispute that the criminal offence of rape infringes on an individual's basic human rights enshrined in the Indian Constitution- The Right to Life and Personal Liberty. Nonetheless, such a heinous crime infringes on the human Rights of men or any human being in general, regardless of whether they are legally able to be raped.

The 1948 Universal Declaration of Human Rights (UDHR) serves as the foundation for contemporary international human rights law. Article 2 of the UDHR states that everyone has the right to the rights outlined in the declaration, regardless of race, religion, or nationality (including gender). Every human person is equal before the law and is entitled to equal protection under the law, according to article 7 of the declaration. The declaration's gender-neutral pronouncement backs up the claim that every heinous crime should be regarded equally in eyes of the law.

Custodial Reflections

In a 1992¹⁰ investigation, the public was made aware of the common practice of homosexual rapes/gang-rapes in jails. Such examples demonstrate the inability of prison administrations and authorities to treat inmates with empathy or even rudimentary human integrity. While these sexual encounters can likely spread infections and dangerous sexually transmitted diseases among prisoners, the emotional ordeals and ruthless physical anguish associated with such situations linger for a long time in the mind of defenceless. According to a report published in 2018,¹¹ the suicide rate in Indian prisons is 1.5 times higher than the general population.

⁹(1996) 1 SCC 490

¹⁰R. Sreekumar, Access to Justice for Under Trial Prisoners: Problems and Solutions, Human Rights Initiative (1992).

¹¹3 Neena S. Sawant, Suicide in Indian Prisoners, 2 Annals of Indian Psychiatry 1-3 (2018).

Ram Singh, one of the commanders accused in 2012 Delhi gang-rape case, was discovered hanged at the Tihar Jail in New Delhi on March 11, 2013, as a result of claimed pitiless sexual victimization by other inmates. Ram Singh's killing is a stark representation of the untold truth that lies behind the bars, highlighting the prisoner's inability to stand up for their rights while being subjected to such blatant crimes on a regular basis. In 1981, the People's Union for Civil Liberties (PUCL) stated their concerns about the situation in Tihar revealing:

“when a young boy enters, the inmates have been known to bid on the youngster's price. The price is expressed in ‘Bidis,’ soap, or charas. Frequently, captives have been segregated into camps and the camps have fought over who would get the new enterant”.

Concluding Remarks And Recommendations

Rape is a deplorable and extremely harmful crime that is committed by both men and women. Men are invulnerable, it is always a guy who commits rape, men are unable to grasp the physical misery or mental ordeals suffered in rape, and other legendary conceptions surrounding rape are nothing more than faulty assumptions devoid of any reasonable rationale. Several European countries, including England, Scotland, and Ireland have made significant changes to their criminal laws to support a gender-neutral approach to the crime of rape.

Although Article 15(3) of the Indian Constitution of 1950 allows the government to make special provisions for women and children, it does not limit the government's ability to protect the lawful interests of men or transgender people, nor does it limit the government's ability to grant them equal socio-legal status in serious crimes. The argument that there isn't enough statistical proof against male or transgender rapes is incorrect, because under-reporting of such occurrences does not rule out the possibility of them happening in real life.

The following are some suggested proposals for developing a gender-neutral approach to rape law in India:

- 1) Recognizing the existence of male and transgender rapes in India and revising section 375 of the Indian Penal Code, 1860 in a gender-neutral manner.
- 2) Discarding the gender-based stigmatization of rape and acknowledging that both the perpetrator and the victim can be of any gender.

- 3) Striking a balance between the rights and obligations of men, women and transgenders in order to avoid any conflicting interests or possible legal privilege exploitation.
- 4) Ensuring that inmates have equal protection under the law for their human rights, and verifying that sexual violence against them is dealt with maximum zeal and thoroughness.
- 5) Proposing comparable punitive laws for accomplices and abettors in cases of aggravated sexual offences, regardless of the accomplice's or abettor's gender.
- 6) Finally, we must educate and sensitize our country's youth about sexual health, mutual consent, and safe sex practices so that they learn to appreciate people of all genders and treat them equally. This phase will verify the development of a civilized society with educated young minds who variety, administration, and compassion for all community members, resulting in lower crime rates and less horrible sexual offences. As a result, education may be the most significant condition for facilitating the construction of a peaceful and harmonious construction free of criminal annihilation.

Gender-neutrality in rape law does not argue for completely desexualizing the crime of rape; rather, it intends to gradually widen the scope of the Indian Penal Code in order to build an unbiased approach to the existing under inclusive rape legislation.

Recognizing that rape perpetrators and victim do not belong to any one gender in an urgent need in this rapidly changing culture in the twenty-first century, and the sooner the better. In the words of former Associate Justice Wiley Blount Rutledge of the United States Supreme Court, "Equality before the law in a true democracy is a matter of right." It can't be a question of charity, favor, grace, or discretion."