

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

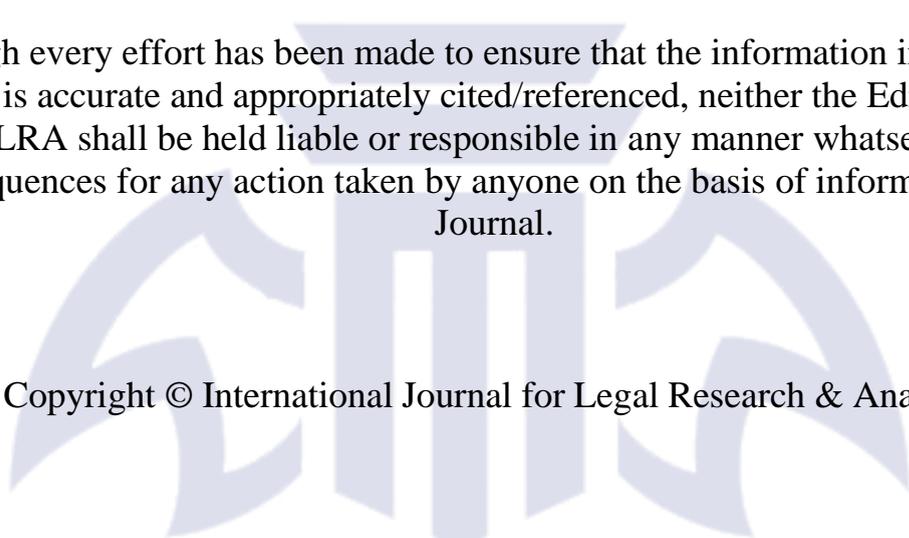
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# **NEED FOR GENDER NEUTRAL LAWS IN LIGHT OF MARITAL RAPE**

**Authored By-Paarth Jain**

## **Introduction**

Gender-specific conditions and power interactions amongst male and female that drive sex prejudice, particularly gender-based assault against male, are ignored by laws designed in consistent ways.

The Indian Constitution ensures equality, fraternity and right to freedom are enjoyed by all the citizens. Furthermore, every citizenry has the liberty from discrimination based on 5 grounds described under Article 15<sup>1</sup>.

Whenever it relates to crimes such as harassment, exhibitionism, surveillance, molestation, and rapes, though, male and LGBTQIA people are not getting their rights.

Generally, there has been a common misconception of that it is just the females who are always the victims and men are always the perpetrators of sexual offences, but the reality is that males are also cases of rape infractions and false allegations. This article examines India's outdated laws regarding sexual crimes and how they deny men and transgender people in the country speedy trial.

The IPC 1860, has sections 375 and 376<sup>2</sup> that deal with convictions for rape of a female by a male. Other than the legislations dealing with sexual assaults, there are other legislations too which are women centric.

However, if this is the fact, therefore the claim of supremacy ought not to be sexually preferential, as it might apply to any class, sect, lifestyle, faith, or cultural status. As a result, any type of sexual assault can occur in both men and women, as well as other social classes.

## **Historical Background Of Rape Legislations**

Even before beneficial result in community, we, as individuals, must grasp the societal ramifications of particular movements, the society's, and the reaction. As a result, in order to comprehend society and effect change, one must first grasp its history and evolution across time in order to tackle and address contemporary difficulties.

These have been considered that, traditionally, the goal of Indian female has often focused on reforms in the law concerning rape. Female have always struggled with the expanding crime of rape.

The Delhi rape trial is among the most well-known rulings in the world of legislation, and it was also the catalyst for numerous changes in criminal justice. It is considered to be one of the most important instances in the realm of criminal procedure and the topic of rape.

The Judges Ruled in this instance also that naive girl who was already been raped by law enforcement officers had granted her assent because there were no signs of wounds in the case and because the absence of wounds indicated agreement. Following this case, four law professors wrote an open letter to the CJI, expressing their displeasure with the situation. This case sparked a trend

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<sup>1</sup> INDIA CONST. art. 15, cl. 2.

<sup>2</sup> IPC. § 375, 376.

in which the victim was no longer blamed and the guilt was shifted to the perpetrator. Another demand made by the protestors was for in-camera procedures and the ou pas of the identities of the rape survivors.

The suggestion has been to ignore the Survivor's past. The Nirbhaya Gang rape trial, though, was the incident that jolted Country just after Mathura particular instance. It resulted in a slew of changes to criminal justice that have radically altered the landscape of the legislation in that subject and led to the creation of the "Criminal Law Amendment Act, 2013"<sup>3</sup>.

## **LGBTQIA Victims Of Assault**

Several violence targeting nation's LGBTQIA+ were reported. As a result, the existing rules are unfair in that they only consider one facet of society, namely one gender, while neglecting others too.

According to a survey undertaken by PUCL in Karnataka, there seem to be a multitude of incidences of violence on nation's LGBTQIA+. The most disturbing aspect of the report, however, was the conclusions reached. According to the study, they were subjected to sexual forms of assault on a regular basis.<sup>4</sup>

Individuals were physically assaulted for someone being LGBTQIA+, and it was reported that in addition to the obvious assault, they got subjected to a great deal of psychological persecution. Getting roughed up, having blobs of chemicals poured at them to dismember them, and several other forms of bodily brutality were used against them. When they submit the incidents of abuse to the police, these persons are also subjected to a lot of sexual abuse. The cops try to humiliate them, accuse them of being victims, and even feel their genital components to make them feel insecure and assault individuals. Whether or not physical violence is used, this is still considered abuse and must be factored.

## **Understanding The Gender Neutral Laws From Different Perspectives**

Almost all of them argue that Section 375 of the IPC is sexual preference as it will not specify situations in which men might also be victims. It just gives a woman the right to file a rape action. Few male sexual advocacy organisations, and attorneys feel that fraudulent accusations of rape are most common in circumstances of sexual acts ending with a woman filing a complaint. When those relationships fail, a woman motivated by retribution and ego is unlikely to make any unfounded claims.

The number of sexual crimes had risen to three out of twenty-seven. The three youngsters had a number of symptoms, including irregular attendance at school, continuous temperature, diarrhea, insomnia, decreased social contact, cognitive degradation, and so on. Men, like their female equivalents, suffer from despair, and anxiety.

There will be occasions where an assaulted woman marries the criminal to preserve her reputation in community, is there any law to protect a guy who refuses to give up paternity to a child born of

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<sup>4</sup> Navin Kumar Jaggi, *Why There Is A Need Of Gender Neutral Laws In India?*, Legal Service India, (June, 13, 2022, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india.html>

an offence he will not? In such a circumstance, if he is unable to demonstrate that he is not guilty of rape, they will divulge the subject in order to avoid social humiliation.

Once it is suspected that a man has performed an assault, there is a risk that he will be abused while in police or legal detention, until it has been proven that he must be the perpetrator of the sexual assault. In such circumstances, the masculine women's sexual civil and essential rights are breached. In principle, it is thought that a man can always be assaulted and that he is not a victim activity. In their real activities, most men are subjected to anal sex stimulation. Second, if any of the aforementioned events occur to them, few of them have recourse to a law independent regulator, and they are unwilling determine if males can be raped.<sup>5</sup>

## **Rationale Behind Gender Neutral Laws**

“The idea develops from the very fact that men can never be victims of rape as they are aroused by any sexual act, thus, implying the consent on their behalf. <sup>6</sup>However, this is to say that this sort of arousal in the male body can not only be caused due to the fact that they wanted to be a willing participant. <sup>7</sup>But studies have shown that arousal can also be caused by the fact that it could be due to fear, humiliation, and anxiety which could lead to such erections<sup>8</sup>.

There has now been a developing acknowledgement for the fact that male exploitation does indeed take place. There have also been a few countries such as Canada, Finland, Australia, The Republic of Ireland and most of the states of the United States of America, which are developed that have embraced the unbiased and gender-neutral laws in their countries.”

## **Gender Neutrality And Rape Laws**

The Indian Society has a view that female couldn't be attackers stems on the notion that, despite the fact that the laws' definition of rape mentions multiple ways in which an act could be constituted rape, these will still be perceived as urogenital penetration by the wider population. Because men are often constructed larger in comparison to female in physical respects, this gives the general populace the impression that only men can establish authority.”

Sex impartiality in sex offenses laws based on the notion that the penal code must recognise that assault victims might be of any gender. Sexual impartiality in rape legislation was already introduced in various countries, however there is still a limited awareness of men and LGBTQIA+ rape survivors.

Troops were reported to assault millions of citizens during wartime. Both men and women are raped by males. Most assault committers are unconcerned about their victims' age or sex. Males and females are raped by each other. "No one is immune to the human capacity to sexually assault or being sexually assaulted."

Assault has long been considered a woman based crime around the planet, particularly in India. Rape is founded on the assumption that only a woman can be a victim and only a man can be a perpetrator, as stated by Sections 375 and 376 of the IPC.

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<sup>5</sup> Diva Rai, *What are the laws on gender neutrality in India*, Blog IP Leaders, (June, 13, 2022, 9:29 PM), <https://blog.ipleaders.in/what-are-the-laws-on-gender-neutrality-in-india/>

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Kerti Sharma and Shipra Tiwari, *Should Sexual Offences be Gender Neutral*, SCC Online (June. 13, 2022, 9:29 PM), <https://www.sconline.com/blog/post/2021/05/27/should-sexual-offences-be-gender-neutral/>

"All humanity have the prospects to be sexually assaulted. Married people are sexually assaulted. Men and women, kids are sexually assaulted. Infants are sexually assaulted. Physically weak people are raped. Heavily sedated cases are raped. Moms, dads, two siblings are raped. Teenagers, and also elderly babies and kids, rape each other. Male and female inmates rape each other though.

Furthermore, rules associated with sexual intimidation, exhibitionism, surveillance, and attempted rape are sexual preference, stating that only a man can commit a crime and just a female could be a sufferer.

Furthermore, the government has generally disregarded the issue of increased sexual victimisation in correctional institutions such as jails, youth correctional facilities, and so on, allowing the form, mechanics, and effects of male and transgender victimisation to progress. Men and LGBTQIA+ sexual victimisation has received little attention in recent scholarly and legal disputes, and it is usually derided and scorned.

Even though male are traditionally thought to be the nonconsensual perpetrators, there will be an extensive finding into male survivors' experiences with the judicial system, that has disproved many socioeconomic mythologies about individual men's sexual victimisation and emphasised the extent to which misunderstandings regarding men and LGBTQIA+ rape impact criminal justice experts' and the overall government's behaviours<sup>9</sup>.

To put it differently, assault rules that only target men as offenders are founded on stereotyped notions of masculine aggression and female subjection<sup>10</sup>. When women are still perceived as obedient, timid, and vulnerable, it's tough to recognise that they may also be child rapists.<sup>11</sup>

## **Relevance Of Indian Constitution In This Regard**

*"They are under the impression that opening up would only cause them to be termed as "un-manly" or be told that they are "not real men." and that too, for the sole reason that they failed to enjoy the sexual relationship advanced towards them by women."*

Third Section of the Law of the Land guarantees essential rights towards every indian citizen, irrespective of sex.

In the perspective of the legislation, Article 14 stipulates that everyone has the liberty. This article asserts that all, irrespective of sex, is identical.

Article 15 prohibits division on the grounds of having, i.e., no one can deprive people of a human's or a case's sex, faith, or any other type of discrimination.

Ignoring the reality that men assaults are less common than female assaults, it is important to recognise that guys are not exempt from use of measures to safeguard them.

Similar opportunities for men in victims of sexual abuse doesn't somehow imply that feminist's rights are being taken away.

Providing males, a voice to talk out over their attack and even the ability to file complaints would, on the other hand, lessen the male privilege of asserting authority, hence reducing assault on women, as expression of supremacy is the major source of aggression against women.

The shyness of being judged in the society by culture and fearing a backlash because it is considered that "men could not be survivors of attack" is one of the causes why men do not speak out for being victims of rape on them.

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<sup>9</sup> Diva Rai, *What are the laws on gender neutrality in India*, Blog IP Leaders, (June, 13, 2022, 9:29 PM), <https://blog.ipleaders.in/what-are-the-laws-on-gender-neutrality-in-india/>

<sup>10</sup> Id.

<sup>11</sup> Navin Kumar Jaggi, *Why There Is A Need Of Gender Neutral Laws In India?*, Legal Service India, (June, 13, 2022, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

## Outdated Discriminatory Laws

both the intellect and the soul It produces indescribable pain. Offenses like these taint a human's humility, or confidence within one's physique. What's worse, this crucial characteristic of confidence is only ascribed to women. Criminal law does not regard men's decency. Due to a major conceptual aspect of criminal procedure, only male sexual chastity is recognised.

Sexual offences are covered by the Offences involving the Victim's Body. Sexual offences are horrific acts that damage the victim's body as well as his or her mind. Enraging humility, Molestation, Getting naked, Exhibitionism, Harassment, Assault, and Unusual acts are some of the subcategories.

Survivors of such rape cases should solely be female, per the description of such acts in the IPC. The word implies that men are the sole perpetrators of sexual crimes<sup>12</sup>.

Most of this implies that male and LGBTQIA+ people lack humility, that they'll be sexually abused sufferers, and female wouldn't be sexually abused perpetrators.<sup>13</sup> Furthermore, a woman is prohibited from committing crimes against women against the other woman, while homosexual activity refers to all sex crimes perpetrated against men<sup>14</sup>.

The crime of enraging decorum is defined under Section 354 of the IPC, 1860. A woman must be the victim of such an offence, and the offender had to use violent methods to offend her dignity<sup>15</sup>.

Although the ICP is mute mostly on definition of decency, the judge in Tarakeshwar Sahu v. the State of Bihar decided that decorum is associated with women.

Sexual harassment and disrobing are also defined in Sections 354A and 354B when the victim is a woman and the offender is a male. Nevertheless, whether the complainant is a male or LGBTQIA+ person and the offender is a male or a female, these regulations show no evidence of or prescribe penalties.

The crime of Exhibitionism is punishable under Section 354C of the IPC, 1860.

It is a felony when a male views or photographs the image of a woman performing a sexual affair in conditions so she would normally assume to be unobserved, by the offender or by anybody else at the accused's request, and then distributes that picture.

This part also recognises that exhibitionism will only be done by a male to a female and not the other way around. Harassment, which is specified under Section 354-D of the IPC, 1860, is another female regulation.<sup>16</sup>

Just a guy that pursues, analyzes, observes, or sneaks on any female even though her obvious disdain is punished. Nevertheless, it struggles to realize that a male or LGBTQIA+ person can be both a sufferer and an offender.

Section 375 of the IPC, 1860, defines rape. It starts with the words "and" and "and" and "and" and "and" For the simple fact that males are typically perceived as offenders, and a female physically coercing a guy to even have his secrete her is unthinkable in a traditional society, a guy has perpetrated rape.

It declared a male liable if he implants his genital, puts any item, or coerces any portion of a female's cells to make entry, or forces his lips to a female's body, perineum, or ureter, or forces woman to do the same with him or other individual against her desire, permission, or deceit.

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<sup>12</sup> Diva Rai, *What are the laws on gender neutrality in India*, Blog IP Leaders, (June, 13, 2022, 9:29 PM), <https://blog.ipleaders.in/what-are-the-laws-on-gender-neutrality-in-india/>

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Navin Kumar Jaggi, *Why There Is A Need Of Gender Neutral Laws In India?*, Legal Service India, (June, 13, 2022, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india.html>

<sup>16</sup> Kerti Sharma and Shipra Tiwari, *Should Sexual Offences be Gender Neutral*, SCC Online (June. 13, 2022, 9:29 PM), <https://www.sconline.com/blog/post/2021/05/27/should-sexual-offences-be-gender-neutral/>

People have tried for just a lengthy period to produce rape laws sexual preference. The proposals, however, aren't included in the law of the land. Further initiative has been taken under the former Chief Justice of India, Justice J.S.Varma, to organise a panel to provide rules for female's safety.

These are some of the panel's proposals would be to render rape sexual preference exclusively in terms of the sufferer, with the offender remaining a man. Nevertheless, several female's activist groups argue that rape happens that disproportionately affects women, and that any attempt to make it gender-neutral would exacerbate a woman's predicament. As a result, this proposal was not followed.

## Reason For Criticism Of Gender Neutral Laws

Sex equality is usually depicted as a reaction to feminism or as a diversion from the push for equality. The limiting ideals of extreme feminists are inhibiting community evolution and harmony. Inclusivity opponents have also suggested that such legislation can be harmful to female issues. Nevertheless, no factual or philosophical information supporting the perception of male violence in sexual assaults has been offered.

Despite claims to the contrary, many research have shown that a man's reaction to such physical assaults is identical to a female's helplessness. The primary sufferers respond with paralysed despair and meek submission to the attacker as a result of their fear.

“Addressing the sexual victimization of men, Susan Brownmiller in her book *Against Our Will: Men, Women and Rape*, writes: While the penis may remain the rapist's favourite weapon, his prime instrument of vengeance, his triumphant display of power, it is not in fact his only tool. Sticks, bottles and even fingers are often substituted for the **natural** thing. And as men may invade women through their orifices, so, too, do they invade other men.<sup>17</sup>”

Citing concerns of someone being branded as feeble or dishonest, or the politicisation of assault as simply a female issue, most males who've been survivors of such intercourse assault struggle to report the crime to police. Some sufferers, is from the other side, are unwilling to call the authorities even if they are terrified of being branded as non-male.

A test on male violence found that, contrary to popular belief, sexual aggressiveness is driven by primacy but instead of sexual gratification. Rape's primary goal is to shame, belittle, and break the soul of the sufferer<sup>18</sup>.

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<sup>17</sup> Diva Rai, *What are the laws on gender neutrality in India*, Blog IP Leaders, (June, 13, 2022, 9:29 PM), <https://blog.ipleaders.in/what-are-the-laws-on-gender-neutrality-in-india/>

<sup>18</sup> Navin Kumar Jaggi, *Why There Is A Need Of Gender Neutral Laws In India?*, Legal Service India, (June, 13, 2022, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

## Conclusion

Based on the preceding essay and study, we can conclude that not only female, but also males and other sexes, seek assistance in rape cases. We should strive for equality in the law, and the presence of sexes other than the two most frequently recognised sexes can also be challenged or rejected. As a result, regulations must be enacted to ensure that criminals are held accountable irrespective of the patient's or suspect's gender identity.

One of the first steps toward facing the fact of male reproductive victimisation is to rethink the way statutes are drafted.

In addition, in the battle of rape cases, all sexes must cooperate to together resist. This is vital not only to make people more cognizant of male victimisation, but also to preserve women's rights.<sup>19</sup> Only when treated appropriately can gender-neutrality serve in support of the feminist cause and social equality.

This seems to be true of not only IIPC of 1860, but of related legislation as well, such as personal abuse and matrimonial. With Victorian-era legislation, we can't function in a 21st-century court system. As previously noted, there is a need to shift from a ladies to a sexual preference approach to lawmaking.

Gender awareness courses should be conducted for the general public, but especially for federal agents, if they are justices, policemen, or legislators. This is required so that individuals do not reluctant to call police officials with grievances. The cops are frequently approached by victims as the first institution in the legal system.

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<sup>19</sup> Kerti Sharma and Shipra Tiwari, *Should Sexual Offences be Gender Neutral*, SCC Online (June. 13, 2022, 9:29 PM), <https://www.scconline.com/blog/post/2021/05/27/should-sexual-offences-be-gender-neutral/>