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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **EQUAL PROTECTION: GENDER-NEUTRAL LAWS** **FOR SEXUAL OFFENSES IN INDIA**

AUTHORED BY- PRAPTI KAPOOR,  
STUDENT, AMITY LAW SCHOOL,  
AMITY UNIVERSITY, NOIDA

## ***Abstract-***

In India people still believe in the traditional notion of sexual crimes that the victims can only be women. Men being strong they cannot be victim and can only be perpetrator. But the truth is men too are victims of sexual assault but they tend to remain silent because they don't have enough laws and rights to protect them. They also feel embarrassed to file a complaint as it is believed that men are strong enough to protect themselves.

The LGBTQ+ community also face discrimination and are not provided with much laws to protect themselves. They face humiliation and are sexually harassed. They are still not considered as a part of society and face a lot of hardships.

Gender-neutral laws help to create an environment where all the genders are protected, and given equal opportunities to protect themselves. It helps to break the traditional thinking that men are strong so, they don't feel the pain. By making gender sensitive laws India can create a society that respects all genders, and help everyone to live a dignified life.

## ***Introduction-***

“Gender neutral” describes actions, words, or regulations that refrain from making gender distinctions between individuals. It seeks to establish a welcoming atmosphere that does not discriminate against or favour people based on conventional gender standards. This idea is frequently used in a variety of circumstances, including attire, washroom usage, and other social and institutional settings.

In an effort to acknowledge and value a variety of gender identities and manifestations that go beyond the conventional male-female dichotomy, gender neutrality is being promoted.

“Gender refers to the social, cultural, behavioural characteristics, and roles associated with being male or female.” In addition to biological distinctions (sex), it encompasses duties, expectations, and identities that society deems appropriate for men and women. *Gender identity* refers to “a

person's deeply felt internal sense of gender, which may or may not match the sex assigned to them at birth.”

It's important to keep in mind that gender is a spectrum and that, in addition to not cleanly falling into one of the traditional categories, people may identify as non-binary, genderqueer, or genderfluid, among other identities.

Promoting inclusion and equality requires an understanding of and recognition of gender diversity.

Gender-neutral laws help to promote equality and fairness and provides equal opportunities to avail justice in any case of injustice caused to them. Sexual offences leave a deep impact in the mind of the victim, so it is important that they can approach the court, seek legal guidance, and for that it is important that there are laws made to safeguard the interests of all irrespective of their gender.

Although everyone is equal before the law according to the Rule of Law philosophy, this is not always the case in real life. Many communities have been marginalised for generations because society is so biased. It was necessary to enact laws in their favour to safeguard them from any injustice, and grant them equality with other communities. This is evident in the case of women, for whom laws particular to their gender are passed in nearly every country on the planet.

The need for gender neutral laws-

With the changing times and growing number of sexual crimes, harassment it is important that there should be gender sensitive laws in India.

There are many laws but they are gender specific like laws related to dowry, sexual assault, domestic violence etc, all these laws are specifically made to protect women. By making laws that does not tackle the injustice faced by all, it restricts its reach by prescribing who is allowed to commit a crime by presuming the gender of both the victim and the offender.

Due to these restrictions, many cases of a similar kind may be disregarded and remain unreported simply because the victim's gender, the offender's gender, or both, does not match what the law specifies.

The plight of men in light of laws that are gender-centric and require thoughtful amendment was “first brought to light in the 172nd Law Commission Report<sup>1</sup>.” Later, the *Criminal Law (Amendment) Bill, 2012* proposed replacing the word "rape" wherever it occurs with the word "sexual assault" in order to broaden the definition of the offence and make it gender-neutral.

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<sup>1</sup> <https://www.scconline.com/blog/post/2021/05/27/should-sexual-offences-be-gender-neutral/> (Last visited on 1 March 2024)

Unfortunately, nobody paid any attention to these guidelines—that is, until the University Grants Commission (UGC) did. Following the Ministry of Human Resource Development's announcement, the UGC used its authority to enact regulations prohibiting sexual offences in higher education.

The 2012 Act Protection of Children from Sexual Offences-

It is important to note that, with the exception of Section 3<sup>2</sup>, which solely addresses “penetrative sexual assault, the whole” Protection of Children from Sexual Offences (Amendment) Act, 2019 is gender-neutral.”

The Justice Verma Committee<sup>3</sup> proposed “a gender-neutral definition of rape in 2012, acknowledging the possibility of sexual assault on men, as well as homosexual, transgender, and transsexual rape.” The committee recommended necessary changes to the “definition of rape in the Criminal Law Amendment Act, 2012,” but these changes were later omitted. Several high courts have issued similar directives in an effort to fulfil justice's objectives. “The Criminal Law (Amendment) Bill, 2019” was presented in the Rajya Sabha to address the same requirement and achieve gender neutrality in sexual offences. But the law was a failure at the outset.

In *Varun Bhatia v. State and Anr.*,<sup>4</sup> “The Delhi High Court has outlined how courts should handle “gender-specific laws” and maintain their gender neutrality, stressing that in these situations, the approach should not be biased in favour of one gender over another.”

Consequently, it is clear from the aforementioned instance that gender neutrality is crucial and that equality should always prevail when making decisions, with no gender being given preference over another.

### **Transgender-**

It is a “phrase used to characterise someone whose gender identity differs from the sex they were given at birth.” They face a lot of discrimination, humiliation and people don’t accept them and criticize them. They are bullied by people and this leads to a lot of mental and emotional trauma.

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<sup>2</sup> Section 3 Protection of Children from Sexual Offences (Amendment) Act, 2019

<sup>3</sup> <https://www.newindianexpress.com/web-only/2023/Oct/13/why-have-male-victims-of-sexual-offences-been-abandoned-by-new-bills-introduced-in-parliament> (Last visited on 1 March 2024)

<sup>4</sup> *Varun Bhatia v. State*, 2023 SCC OnLine Del 5288

Transgender people are not well protected by laws or other rights. Though our constitution provides equal protection to all, and everyone should get equal opportunities still they are deprived of basic amenities, rights. Seeing the atrocities they face and to provide them protection “Transgender Persons (Protection of Rights) Act of 2019”<sup>5</sup> was passed.

“Anyone who frequently acts in a sexually abusive manner towards a transgender person faces up to two years in prison and a fine under Section 18(d) of Chapter 8 of the Transgender Persons (Protection of Rights) Act of 2019.” This is a clear illustration of how unconcerned the legislature is with transgender individuals.

There have been instances of rape of LGBT people. In a recent case, at least five men are accused of beating up and sodomising two LGBT students from Bangladesh in the Shakarpur<sup>6</sup> neighbourhood of Delhi. In relation to the case, four accused parties—including a minor—have been placed under arrest.

In *State of Punjab v. Ramdev Singh*-<sup>7</sup>

“The Supreme Court made the following observation: rape is a crime against society as a whole, not just against the person of a woman. It breaches the most prized fundamental right protected by Article 21 of the Indian Constitution and is a crime against basic human rights.”

So, as it is evident in the case discussed above the court has held that rape is not a “gender specific but a gender- neutral offence” anyone who is a victim of it experiences the same trauma and pain. It leaves a deep impact and the persons entire life is changed because of this.

### **Constitutional Provision-**

Constitution of India which lays down the rules, duties and rights of citizen of India as well as the government. The fundamental rights are those rights which cannot be taken away from any citizen. Some of the constitutional provisions are discussed below-

Based on the idea of the “Rule of Law”, “Article 14” of the “Indian Constitution” establishes the “right to equality before the law.” As per Article 14<sup>8</sup> of our constitution “everyone is equal before

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<sup>5</sup> Section 18, Transgender Persons (Protection of Rights) Act, 2019

<sup>6</sup> <https://www.indiatoday.in/india/story/three-arrested-over-gang-rape-of-two-men-in-delhis-shakarpur> (Last visited on 6 March 2024)

<sup>7</sup> *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421

<sup>8</sup> Article 14, Indian Constitution

the law and is entitled to the same protections under the law anywhere in India.” All individuals on Indian territory, citizen or not, are entitled to exercise this fundamental freedom.

Furthermore, the Article might be seen to support the right to equal treatment in comparable circumstances regardless of a person's gender or sexual orientation because it discusses “equality before the law” and “equal protection under such laws.” This will apply to the responsibilities as well as the rights granted.

The Supreme Court acknowledged the difficulties the transgender population faces as a result of their gender not being recognised in the historic decision in the NALSA case. Since it immediately compromises their dignity and personal freedom, the Court emphasised how this gender-based discrimination and prejudice violates both Article 14 and Article 21. The Court ruled that transgender people are denied equality before the law and the same protections under the law as people of other genders because they are excluded from Indian laws and legal provisions. The transgender population faces pervasive prejudice as a result of this exclusion, which can only be stopped by appropriately accommodating gender-inclusive terminology in the legislation.

“Article 15<sup>9</sup>, however, forbids discrimination on any basis, including but not limited to religion, race, caste, place of birth, sex, or any combination of these.” Nevertheless, clause (3) also gives the State the authority to enact unique laws and regulations aimed at uplifting the weaker segments of society, such as women.

### **Legal Provisions in India-**

There are many legal provisions like rape laws, sexual assaults, dowry, etc. Some of the legal provisions are discussed below-

Section 375-

“Rape”

Section 375 of the Indian Penal Code<sup>10</sup>, as amended by the Criminal Law (Amendment) Act, 2013, stipulates that “a man is considered to have committed rape if he -

- forces a woman to have sex with him or another person, or if he inserts his penis, to any extent, into her mouth, urethra, vagina, or anus

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<sup>9</sup> Article 15, Indian Constitution

<sup>10</sup> Section 375, Indian Penal Code

inserts, to whatever degree, any item or body part—other than the penis—into a woman's vagina, urethra, or anus, or forces her to do so with him or another person

- modifies any aspect of a woman's anatomy to induce penetration into the vagina, urethra, anus, or any part of the body of such woman or makes her do so with him or any other person
- apply his mouth to a woman's vagina, anus, or urethra, or causes her to do so with him or another person.”

#### Section 376-

This section deals with rape penalty. In a Kerala high court<sup>11</sup> case related to custody of child.

Justice Mustaque voiced his worry that the Indian Penal Code's (IPC) Section 376, which deals with rape penalty, is not gender-neutral. He declared,

“Section 376 is not a clause that is gender-neutral. It is not prosecutable for a woman to deceive a man under the guise of marriage. However, a male might face charges for the identical crime. This is what kind of law? It need to be impartial to gender.”

#### Section 377-

According to Section 377 of the IPC<sup>12</sup>, “anyone who voluntarily engages in carnal relations against the natural order with a man, woman, or animal faces a life sentence in prison or a term of imprisonment of any kind that may last up to ten years, along with a fine.”

Any unnatural sexual relations with a man, woman, or animal is prohibited by Section 377 and carries a maximum ten-year jail sentence in addition to fines. For this reason, neither men nor even transgender persons have their own set of specified rules.

The rape case of Nirbhaya Gang. This was the most horrible incident that took place aboard a moving bus during Delhi's child nights in December.

It resulted in numerous changes in the field of criminal law that fundamentally altered the direction of the legislation in that area and gave rise to the “Criminal Law Amendment Act of 2013.”

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<sup>11</sup> <https://thewire.in/law/kerala-high-court-rape-offence-gender-neutral-promise-to-marry>  
(Last visited on 15 March 2024)

<sup>12</sup> Section 377, Indian Penal Code

### Section 497-

The Parliamentary Standing Committee<sup>13</sup> on Home Affairs has recommended that Section 497 of the IPC, which was overturned by the Supreme Court in 2018, be kept in the proposed legislation by "making it gender-neutral," citing the objectives of gender neutrality in doing so.

A person would be guilty of adultery under Section 497 if they had sex with a married woman without her husband's knowledge or consent. This might result in jail time, a fine, or both; nevertheless, the woman was exempt.

### New Criminal Law Acts-

The government has passed three new bills which will replace the old ones-

1. Bharatiya Nyaya Sanhita- Indian Penal Code
2. Bhartiya Nagarik Suraksha Sanhita- Criminal Procedure Code
3. Bhartiya Sakshya Adhinyam- Indian Evidence Act

The new acts<sup>14</sup> have once more failed to provide any protection for male victims of sexual assaults. "Despite the BNS's ("Bharatiya Nyaya Sanhita") Statement of Objects and Reasons claiming to make crimes against women and children gender neutral, the relevant act's sections do not reflect this change." The sections of the law that deal with sexual offences are the same as those in the previous versions, and they still make use of gendered terminology such "woman" as victim and "man" as offender. Making sexual offences gender-neutral presents a historic chance to advance gender equality.

### Difficulties in Adopting a Gender-Neutral Law-

1. Media Representation-

Media is considered as the fourth pillar in our country. Whatever information they share on their channels, newspapers make a deep impact. Everyone believes it to be true. It can impact the thinking of people. The mainstream Indian media does not portray males as victims of sexual assault; instead, it paints an idealised picture of the guy. Indian films downplay the seriousness of sensitive themes like misogyny by using comedy and sexist humour.

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<sup>13</sup> <https://thewire.in/government/parliamentary-panel-gender-neutrality-section-377-criminalising-adultery> Last visited on 16 March 2024)

<sup>14</sup> Supra note 11

The stigmatisation and harassment of gay and transgender individuals is another uncomfortable topic that the Indian media makes fun of. It has also been used humorously to discuss male molestation.

“The only well-known Bollywood film to tackle the problem of sexual assaults against men is Aitraaz, in which the protagonist is subjected to a sexual assault attempt by the boss's wife.” Recently, Sarvjeet Singh<sup>15</sup> was arrested after he was wrongly accused of harassing Jasleen Kaur after she shared a picture of him on Facebook and it went viral. Following the investigation, it was discovered that Sarvjeet Singh was innocent; but, as a result of the media's hype and coverage, Sarvjeet Singh was dubbed a harasser, subjected to public humiliation, and lost his job. This instance demonstrates unequivocally how the media, by reporting without independently checking the facts, can wreck the life of an innocent person, by believing in the traditional notion that victims are always female and perpetrators are always male. Therefore, it is crucial that the media exercise their authority with extreme caution. They should be aware of the effects their words will have on the lives of those they criticise and considerate of their sentiments.

## 2. Patriarchy-

A nation, government, or society where men dominate or hold power. In India there is patriarchal society, there are certain set of behaviour, act which men are expected to perform and if they do not perform it and deviates from it then society will criticise them.

The assumption that a guy must always be strong, incapable of displaying emotion or crying in public, or that he feels no pain are a few instances of how society expects an "ideal man" to act. Even though they favour gender equality, some men are hesitant to talk about it because of this, which leads to gender inequity.

Men are silent regarding incidences of sexual assaults against them because of society's patriarchal mentality. As a result, there is no reliable data demonstrating that men can fall victim to sexual offences. Men must speak out about these instances in a way that is comparable to the feminist movements in order to pass gender-neutral laws prohibiting sexual offences.

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<sup>15</sup> Sarvjeet Singh v. State (NCT of Delhi), 2022 SCC OnLine Del 3027

## **Conclusion-**

With the changing times new laws are emerging it is important that people change their mindset. There should be gender sensitive laws so, that all the people irrespective of their can get justice whenever they face sexual assault or harassment of any kind.

There should be awareness about this concept so, that people can understand no matter what gender it is sexual harassment is the same for everyone, the pain, the emotional and mental trauma is same for everyone and it is more for the person for whom there may be laws but not enough to protect them.

Though there have been a few landmark cases that has recognized the transgenders but still they are not given equal rights, it is important to understand their issues and give them the respect they deserve so, that they can live a dignified life.

Laws that are gender-neutral contribute to the development of an inclusive atmosphere where all genders feel valued and safe. Laws ought to apply equally to all people; if we privilege one gender over another, there may be legal misuse, as the rise in fake cases shows. It is critical to safeguard everyone, regardless of gender. It is crucial to create rules that are inclusive of all genders since everyone experiences suffering and trauma, regardless of gender identity.

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