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GENDER NEUTRAL LAWS TO COMBAT SEXUAL VIOLENCE IN INDIA: A CRITICAL STUDY

AUTHORED BY - REBECCA SARA GEORGE

Abstract

Gender neutral laws for sexual violence has been a debatable topic in India, as most of the sexual violence are considered to be gender biased, which is happening only against women. Gender based laws clearly indicates that man can be the perpetrator for the offence of rape and only women can be the victim. Many countries around the world have changed the age old belief associated with the sexual violence that it could be only be committed against women and hence made significant reformations to bring about gender neutrality for sexual violence In the wake social change ,it is quintessential to expand the definitions provided for various categories of sexual offence of homosexual nature and the recognition of women as perpetrators to sexual offence.Sodomy only criminalizes a part of homosexual offences therefore not entirely effective .Criminal Law amendment bill ,2019 though paves a positive step towards gender neutrality but it has not been enforced yet .Besides substantive changes ,procedural changes needs to be incorporated for proper disposal off gender neutral sexual offences .However ,amendment in penal code is just one step towards gender neutrality of sexual offences .Effective change can be possible by collaborating law with judicial recognition of non-penetrative rape ,elimination of social stigma ,generating awareness and proper sex education

INTRODUCTION

We live in the world of diverse group of people. When we look around, we see different types of people. Different on the ground of their backgrounds, caste, creed religions etc. Let grouping of sex be issued here. From the beginning of time till today, our cultural practices have created a boundary between sexes. Our society has created a boundary of separation for males and females, the way they are raised, their lifestyle, education and even occupation they take on.

There is no denial that we are part of gender obsessed society. Toys ,books,colour ,sports - everything is gendered .Boys don't cry Girls are weak .Male are always criminals and females

are always victim. These are some of the common concept of our society which are cultivated in children since their childhood. The concept of "equality" is only theoretically available in our country. The word gender neutral means something which is applicable, suitable or common for both the genders. The word gender neutral means something which is applicable, suitable or common for both the genders. In other words we must say something which isn't biased on the basis of sex of person. Sexual offences are lamentable crimes which are punished by the state. Most of sexual offences are gender based. The physical and emotional pain that the victim undergoes can't be measured or described that even lead to suicide. There is no law of nature that only a women be victims of sexual offence as most of the men and transgenders are also victims. Our society has fitted a concept of feminine is a weaker gender in our mind. We are forced to believe to believe that men don't feel pain or strong enough to bear it. We fail to realize that being a victim isn't a choice and the amount of pain the victim suffers isn't gender biased. A man or transgenders gets equally depressed and undergoes equal pain and emotional breakdown as women when he undergoes sexual abuse or being victim of sexual offences. But our constitution along with our society fails to notice this. On one hand we have formulated very strict laws in favour of women but on the other hand we ignore the concept that male as well as transgenders being the victims of sexual offence. Mere Gender should not act as a barrier to punish a criminal. Its not about gender. Its about the sexual predation that the victim suffers and everyone deserves to be protected under proper laws because victim has nothing to do with sexuality. A man, or women or transgenders or before being whomsoever they are human beings. Law needs to protect everyone without being biased on the basis of sex, caste, class or anything. Criminal law around the globe curbs sexual offences with stringent punishment. Offences of these nature dents the modesty of a person, the sole element which constitute for a pride over self-body. However this fundamental element of pride is only attributed only to women. In addition to that the according to the definition, victim of sexual offences can only be a woman. Further the definition illustrates man to be a sole executioner of sexual offences. The deduction of all these implies that men and transgenders are devoid of modesty cannot be victims of sexual offences and women are unable to commit sexual offences. Further more sexual offences cannot be directed towards women by a women and every kind of sexual offenses against men can be encompassed within sodomy. In general terms sexual offences are defined as heterosexual in nature, involvement of two opposite genders with the exception to sodomy. Sexual offences characterize forceful, nonconsensual, act by one gender (generally assumed male) towards other gender (generally assumed to be female). This rigid definitional aspect of sexual offences seems a bit off mark in

the present scenario. Every so often we come face to face with news which defies the definitional order of sexual offences. The penal code of India was enforced in 1860 when the patriarchy was prevalent. The laws were distinctively incorporated to protect women from the patriarchal regime of then society. The society has undergone major evolution since then. The constitutional methods of equal opportunities and protective discrimination in favour of women, the campaign of women education and empowerment of women in personal as well as public sphere has brought a change in the era old scenario. Today, world favors gender neutrality, equal opportunities, equal rights and justice. The decriminalization of same sex relationship and social acceptance of LGBTQ screams for a social change, social acceptance and changing mentality of common subjects in the entire nation

“All are equal before the law” -The good old quote widely used by those in the field of law. But unfortunately, reality quotes otherwise. With some introspection we can understand that the egalitarianism in our country is a knife that is sharp on both sides, used at convenience of monetary power. Every hierarchy that exist exist in our country has put us through complications that neither serves justice nor time. But in this context, we consider this issue that is prevalent across the globe -gender. The law however seems to disown the good old quote when it comes to sexual offences being gendered. We will learn, understand and further look into analysing gender neutrality for sexual offences from the perspective born out of common question. what good is the law if it don't serve justice to the innocent ?

GENDER NEUTRALITY: CONCEPT AND ITS MEANING

In India, the concept of gender neutral is very new, questionable and controversial in modern times. According to Merriam Webster Gender Neutral means not referring to either sex but only to people in general. According to Oxford learners dictionary Gender neutral means suitable for or shared by people of both sexes; not making a difference between men and women. The need of gender neutrality arises right here when the discrimination takes ground. Conceptually, it is a broader term than gender equality itself. Gender neutral diminishes the difference between gender. No matter how normal or abnormal they are. It brings the concept of Formal equality of men, women, intersex, transgender, etc. Used to define and identify human sex and gender. the concept of gender neutrality aims to eliminate the term gender entirely. We seek equality on the basis of one person, regardless of gender. biological sex and sexual orientation Gender neutrality is a concept that emphasizes that society should not differentiate roles based on gender or sex. It emphasizes the equal treatment of both men and women without any kind of discrimination

socially, legally, politically or economically. Gender neutrality is primarily about treating everyone fairly and equally, regardless of their background. It's part of a larger social change aimed at exposing the mechanisms of social injustice and assisting in the implementation of true equality in all areas. Gender neutrality, on the other hand, is not an attempt to remove people's gender identities. Again, this does not mean denying the difference between females and men, but rather recognizing the differences between females and men and the impact these differences have on life opportunities. Countries like India require a gender-neutral law rather than gender specific against sexual violence. Laws enacted to protect women from these types of sexual violence serve their purpose to some extent, but ignore protecting men as well as transgender from such crimes. The concept of gender neutrality includes the concept of equality of men and women without distinction of roles and equal treatment in all areas. Women's laws, enacted to curb sexual violence against women, have led to sexual violence against men and transgenders because they did not prevent men or transgenders from seeking help if they were victims of similar crimes. Women, men, and transgender people are equally vulnerable to crimes such as sexual harassment, assault, rape and stalking. If such crimes are committed against any person, the law must include provisions for equal protection of men, women and transgender people. The parliament has been under pressure from feminist groups and women's rights activists against the passing of gender-neutral legislation for such offenses and this is one of the main reasons why These laws only consider women victims.

Patriarchal system and religious views

Male dominance is the literal definition of patriarchy. The belief that men are superior to women is the foundation for male dominance in society and the family. In every way, men dominate, exploit, and control women. Patriarchy has evolved over time, but it has always been present in the social structure. In India, patriarchal societies, particularly Indian patriarchal societies, believe that women's roles are limited to household chores, child rearing, and serving their husbands. The social, economic, and political distinctions that society imposes are based on the biological distinction of sex. In a patriarchal society, the male member of the family is always the head of the family. The decisions of the family's head are final and binding, and women have no say in the matter. The patriarchal system has resulted in not only the subjugation of women, but also social evils such as female foeticide and female infanticide are all the results of this social setup. The women's right movement and the concept of gender equality fighting against the shackles imposed by the patriarchy have attempted to benefit the women but the recent crimes against

women has brought about a collateral damage to the rights of men .If gender neutrality is propagated then it should serve to the advantage of both the genders and not to the disadvantage of anyone .The patriarchal system of the society has contributed enough to the problems for women and now it is same beliefs which are hindering the rights of men .Since it is these values only which are denying the very acceptance of the fact that even men are victims and need protection under the law .In ancient India ,epics and puranas equated women with property .Manu dictated that women would be dependent on her father in childhood ,on her husband in youth and when her lord is dead her sons. Leaving equality apart women were not treated as human beings, they were just commodities in the eyes of men. The Indian patriarchal system led to gender inequality and women of the nation continued to be suppressed by men which prompted the rights of feminism that stood for the rights of women and their upliftment. The patriarchal system has been legitimized by religion. The husband is worshipped like a god.

SEXUAL VIOLENCE LAWS IN INDIA

Violence is one of the most problematic issues faced by anyone and everyone in their day-to-day life. The most general description of what violence is can be given as negativity towards someone or something either through physical actions or verbal which directly or indirectly cause pain to the victim. The form of violence may vary from person to person. The term ‘violence against women has been used to denote a wide range of act like rape, sexual harassment. But this doesn’t mean that a man or transgender doesn’t undergo violence. Violence is something which is not gender specific. Each and every person suffers violence in one way or other.

Sexual violence laws are criminalized in India under Chapter XVI of the Penal Code, which is titled 'Offences Against the Human Body.' Non-consensual sexual acts are defined and punished in sections 354, 354A-D, and 375-376. The Criminal Law Amendment Act of 2013 made significant changes to the law regarding sexual offenses and closed several loopholes, which are briefly discussed below. However, it is important to note that the amendment, among other things, rejected two important proposals made by the Justice Verma Committee, which was formed in the aftermath of the 2016 Delhi Rape case, namely, the criminalization of marital rape and the introduction of gender neutrality in the law, because 'the possibility of sexual assault of men, homosexuals, transgender and transsexual rape is a reality.'

Sexual violence may be further categorized into following

1. Outraging the modesty of women

Sec 354 ¹of IPC provides for the offence of outraging the modesty. To constitute the offence under sec 354 the victim must be the women and the accused must have used the criminal force to outrage modesty ,As to what constitute modesty, the penal code is silent but the court rules out *Tarakeshwar sahu v.State of Bihar* ²the modesty is associated with the female human being as class .It is virtue attached to the female on account of her sex .Whereas Merriam webster dictionary differs by putting forward the definition of modesty as “property in dress ,speech conduct ,which depicts modesty to be gender neutral .For eg IF “A’ a man is working on his workshop ,through the door comes another man B who tries to grope A .A escapes but B follows and ultimately grasps him .In this example every ingredient specified for offence under sec 354 fulfilled except for the fact the victim is male .In case if the victim was female then it would be an offence under sec 354 .Even if the victim and the perpetrator was a female ,it would not be an offence under sec 354 .

2. Sexual Harassment

Sexual Harassment is provided under sec 354 A³ .Sexual Harassment is committed when a man makes a sexual advance or demands sexual favors or show pornography against the will or makes sexually colored remarks towards women .for eg If a man A is working in a office B also a male who is A’s boss, calls A into the cabin and makes sexual favors or forces him to watch pornography towards A. By general conscience these facts should constitute offence of sexual harassment. Even if we substitute A and B to be female, it still remains unchanged. But according to the IPC the above circumstances wouldn't

¹ Section 354 in The Indian Penal Code

354. Assault or criminal force to woman with intent to outrage her modesty.-Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

² 2006 8 SCC560

³ Indian Penal Code (IPC) S. 354A. Sexual harassment and punishment for sexual harassment.

[i]354-A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

- i. physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii. a demand or request for sexual favours; or
- iii. showing pornography against the will of a woman; or
- iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

constitute sexual harassment. To constitute the offense of sexual harassment it should be directed from a male towards a female. In the above illustration such a person would be escaping from criminal liability

3. Disrobing

Compelling any women to be naked is an offence under sec 354 -B⁴. It provides that if any man, assaults or uses criminal force in order to disrobe or compel any person to be naked such person shall be punished. According to the definition only man a man can execute offence of disrobing and such can be executed on female. For eg "A" a male forcefully strips another male "B". The above facts constitute disrobing except for the fact that is directed towards the male, even if we substitute A and B to be female still the facts constitute disrobing .However the above facts do not fulfill the sine qua non ingredient of male penetration and female victimization saving the fulfillment of other essential ingredients necessary for the offence of disrobing .In both the cases "A" would not be punished as he had not committed an offence under sec 354 -B and he will be escaping from a liability .

4. Voyeurism is a practice of attainment of sexual pleasure from watching others in a naked state or when they are engaged in sexual activity from watching others in a naked state or when they engaged in sexual activity .This act is punished under the IPC under sec 354 - C .Sec 354 provides if any man watches ,captures image ,disseminates recognizes that voyeurism can be committed by a male towards the female .for eg "A" AND "B" are both adults which are engaged in a sexual activity C a female who lives in next door peeps into their private act and makes videos of same .According to sec 354 C falls short of necessary ingredient that is male being perpetrator

4

S. 354 B Assault or use of criminal force to woman with intent to disrobe

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

5. Stalking could be committed under sec 354 –D only if a man follows, contacts, monitors, watches, or spies any women in spite her clear indication of disinterest. The code recognizes stalking only from a male towards the female. For eg if A is a celebrity and spied by B a female, it will not be considered as an offence

Rape

Section 375⁵-This provision defines rape and categorizes the various rape-related acts. The provision takes a gender-specific approach. It labels men as perpetrators by using the phrase "a man is said to commit rape," and it also limits the definition of victim to women. Sections 376 and 376A-D,103 address the punishment for rape as well as the various degrees or aggravated forms of rape, such as rape resulting in death, gang rape, and rape by repeat offenders. The definition provided under sec 375 is quite illustrative .In order to constitute rape, there must be a penetration of penis or object or manipulation or application of moth to the private parts of women against her consent ,or consent obtained under the fraud ,force or coercion .This definition of rape is quite narrow as stated by FBI Uniform Crime report .USA relied on a similar narrow definition of rape until 2013 .The new definition of the rape in USA provides that “the 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 the consent of the victim”. The updated definition denotes that

⁵ Section 375 in The Indian Penal Code

1[375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.] STATE AMENDMENT

(Manipur) —(a) in clause sixthly, for the word “sixteen” substitute the word “fourteen”; and

(b) in the Exception, for the word “fifteen” substitute the word “thirteen”. [Vide Act 30 of 1950, sec. 3 (w.e.f. 16-4-1950) (made earlier than Act 43 of 1983)]. COMMENTS Absence of injury on male organ of accused Where a prosecutrix is a minor girl suffering from pain due to ruptured hymen and bleeding vagina depicts same, minor contradictions in her statements they are not of much value, also absence of any injury on male organ of accused is no valid ground for innocence of accused, conviction under section 375 I.P.C. proper; Mohd. Zuber Noor Mohammed Changwadia v. State of Gujarat, 1999 Cr LJ 3419 (Guj). Penetration Mere absence of spermatozoa cannot cast a doubt on the correctness of the prosecution case; Prithi Chand v. State of Himachal Pradesh, (1989) Cr LJ 841: AIR 1989 SC 702.

the perpetrator and victim could belong to any gender .The social acceptance of LGBTQ has revealed their methods of gratifying their sexual needs .A female with homosexual orientation often uses extraneous substance in commission of carnal intercourse .In view of those possibility of a female committing rape on female cannot be ruled out .On the other hand a male with homosexual orientation if forces another male to intercourse against his will ,it falls under the offence of the sodomy .These acts fulfils the ingredients of offence of rape ,but still such such cases cannot be termed as rape as per the definition provided under sec 375 of the IPC .

2. *Child Sexual Abuse: The Protection of Children from Sexual offences Act (POCSO)*

The law relating to child sexual abuse has also been drafted as a gender -neutral legislation. Under POCSO, both the victim and the perpetrator are defined in gender neutral' terms.⁶ The definition of child includes any 'person' below the age of 18 years⁷ This is a welcome step towards extending legal protection to all child victims. It recognizes the need for the law to address the abuse faced by children, irrespective of their gender

CONSTITUTIONAL PROVISIONS AND INTERNATIONAL CONVENTIONS FOR GENDER NEUTRALITY

1. Article 14 -Equality before law and equal protection of law

The first and foremost right which is guaranteed to all persons is the right to equality .Equality forbids inequality unfairness and arbitrariness .The state shall not deny to any person equality before law or equal protection of laws within the territory of India .Article 14 uses two expression equality before law and equal protection of the laws .The underline principle of article 14 is that all persons and things similarly circumstanced should be treated alike, both in privileges conferred and liabilities imposed .Amongst equals the law should be equal and should be equally administered.

2. Article 15 -Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth

Article 15(1) -The state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex place of birth or any of them

⁶ The Protection of Children from Sexual Offences Act, 2012, s 3, s 5; The Protection of Children from Sexual Offences (Amendment) Act, 2019

⁷ The Protection of Children from Sexual Offences Act, 2012, s 1(d)

There are number of international standards and global commitments that stand up for the cause of the cause of gender equality, India being a signatory to these international conventions. The Universal declaration of human rights 1948, International covenant on civil and political rights 1966 and International covenant on Economic Social and cultural rights 1966, these conventions uphold the rights of individual and mark no discrimination on any basis. These conventions strongly stand up for the promotion of gender neutral laws on every aspect. India has however not succeeded in ensuring gender neutral laws on every aspect as some laws are gender specific which protect only women.

SEXUAL VIOLENCE AGAINST MEN

The criminal law amendment act 2013 brought about changes which were gender specific for sexual offences and protected only women from the crime. The amendments were made in consonance with the demands of the more stringent laws for protecting women made principally by the feminist groups and no protection has been given to male counterpart if they face sexual violence. Sexual violence can affect anyone, regardless of age, sexual orientation, or gender identity. We frequently hear about cases of violence against women, including but not limited to domestic violence, sexual abuse, and rape. Numerous laws are enacted to protect women, and we frequently raise our voices in protest of the injustices that they face, but we forget to recognize that males are also victims of sexual violence, and when we preach about gender equality, does that equality ever exist? Rape, according to Section 375 of the Indian Penal Code, is a crime in which men are the perpetrators and women are the victims, not the other way around. Women are thought to be incapable of raping men. A rape charge requires the Penile Penetration Condition. It is physically and biologically impossible for a woman to rape a man, which is why the Penile Penetration Condition exists. Forcefully penetrating someone is a more serious offence than forcing someone to penetrate you. Rape is a crime against both men and women. These reasons, however, are deceptive because a woman who engages in conjugal intercourse with a man without his consent is committing rape and should be punished appropriately. Our constitution provides the 'Right to Equality' in Article 14. This provision, however, is regularly violated because our legislation does not address concerns of sexual assault against males or the reality that rules governing rape sanctions completely exclude men. Children of all genders, on the other hand, are protected by the 'Protection of Children from Sexual Offences Act, 2012. The Indian judiciary and society talk about men and women having equal rights. Dismally, these dismissals of making legislation against sexual harassment or rape as gender neutral highlight a breach of the Right to

Equality. While the Indian judicial system works hard to protect women from sexual violence, it is unjust to ignore the plight of men who are victims of sexual abuse. However, Indian courts have recently begun to recognise crimes against men and to punish women who make false allegations against men, thereby defaming and harassing them. The Indian government has also tabled the Criminal Law Amendment Bill, 2019, which proposes gender-neutral rape laws. It is past time for society to prioritise gender equality. Because of gender-biased laws that favour women in situations of sexual violence, most cases of sexual violence against men go unreported, and justice is denied to them. The Indian judiciary should focus on enacting new gender-neutral legislation or amending existing laws to make them gender-neutral in order to achieve gender equality in the country. Men who have been victims of sexual abuse may experience similar emotions as other survivors of sexual violence, but their emotions are frequently suppressed owing to macho expectations and fear of societal ridicule. Men are discouraged from speaking out against injustices because they are afraid of being teased, mocked, or insulted by those around them, hostile attitude of police. However, with the advancement of technology and education, as well as global access to information, individuals are coming out of their shells and realising that talking about their experiences will not only reveal the tragedy, but will also set them free emotionally, physically, and intellectually. Many initiatives, for example, such as the #MeToo and #TimesUp movements, which began as a method to encourage women to come out and share their stories of domestic and sexual assault, have also pushed men to confront their offenders. In order to demoralise male victims, society must abandon the notion that rape is a men's issue or that sexual violence has developed as a result of the country's patriarchal foundations. When we hear the word sexual harassment, we immediately assume that the victim is a woman and that the perpetrator is a guy. One of the most common areas for sexual violence to occur is the workplace. Many laws and legislations, such as The Sexual Harassment Act for the Workplace and The Vishakha Guidelines, have been enacted over the years to combat sexual violence against women in the workplace. However, no remedy has been established for males who are sexually harassed at work. This is not to say that men are not susceptible to sexual harassment at work. Laws have been put in place to protect women from the depravity that is sexual harassment, but we keep forgetting that males get harassed at work as well. Male coworkers or female employers are the most likely perpetrators of sexual assault against men in the workplace. Men may be required to elevate their shirts, or a comparable trade-off may exist, similar to what women experience in the workplace. The only difference is that women have recourse against these harassments, whereas men must suffer in silence. With the implementation of gender-neutral laws, it is time to bring

equality and eliminate these gender-biased regulations. Equal attention should be given to the protection of men's rights at the workplace as it is to the protection of women's rights, and men's rights should be incorporated into the Sexual Harassment at Workplace Act 2012 as soon as practicable. The men do not come forward to report such offences because of the social stigma.

CASES

1. *Jayalakshmi v state of Tamil Naidu*⁸ A transgender Pandian woman was detained by police on suspicion of being involved in the theft case. She was later found to have been physically and sexually abused and raped by police officers and later on committed suicide. The court revealed that it was a custodial violence with physical and sexual abuse took a disciplinary action against police officers.
2. *Shivani Shiv Bhat v State of NCT of Delhi*⁹ Shivani Shiv Bhat, an Indian citizen of the United States, visited his ancestral home. However, he was later harassed and beaten to heal his gender non conformity and found a shelter with the help of a local NGO. However, UP and New Delhi police harassed him. It was found to have been illegally detained and harassed by his family and police authorities. Finally, the court upheld everyone's right to certain inviolable rights. It also has a sexual orientation and gender identity regarding the important aspects of the basic right of self-determination, dignity and freedom
3. *PINKI PRAMANIK VS STATE OF WEST BENGAL*¹⁰ Pink Pramanik, a national athlete, was charged with sexual assault and rape charges by a friend who had been cohabiting with her for three years. According to the IPC, sexual offences against adults are gender specific. The court ruled that Pinki should be found to be a man within the meaning of sexual offences. As a result of her medical examination, she was unable to have sexual intercourse and she was determined not to be charged with rape.
4. *Shiva Santhosh Dewangan v state of Chhattisgarh*¹¹ A transgender woman have been raped. Shivani Dewangan blackmailed 50,000 transgender women and sexually acted on the pretext of marriage.
He applied for regular bail. Question: Does the court question of whether to refer to IPC 375 apply? The definition of rape depends on gender as it was gender specific. The victims

⁸ (2007) 4 MLJ 849

⁹ 223(2015) DLT 319

¹⁰ (2014 SCC ONLINE CAL 18832)

¹¹ (MANU /CG/0118/2016)

were transgender, so they relied on the victims of forensics report. No trace of semen was found here. There were signs of injury around the victim's vagina but It gave defendant bail.

5. *MSX VS STATE OF UTTARAKHAND*¹²-The petition was about a trans person who was identified as a woman raped and blackmailed by the defendant. However, when she filed the FIR, police claimed that she was a man rather than a woman because of her biological gender, based on Article 377, which criminalized an unnatural sex. As they argued that She was not female, but a male based on her biological sex. Aggrieved, by this, she sought to enforce her right to self-identity her gender for sexual violence, she tried to exercise her right to choose her gender. The petition was submitted to instruct the state government to treat the petitioner as a female under Act for treating the petitioner as a female.
6. *NATIONAL LEGAL SERVICE AUTHORITY VS UOI*¹³ -The case was filed by NALSA to legally recognized person who fall outside the male / female gender binary. (Third Gender) The court had to decide whether a person outside the male / female was legally recognized as a third gender. The Apex Court legally recognizes the third gender, discusses gender identity, has constitutional and international rights, and directs the state government to develop the actual legal mechanism of the third gender. did. Even the Supreme Court confirmed psychological tests, not biological tests.
7. *CRIMINAL JUSTICE SOCIETY OF INDIA VS UOI*¹⁴-The criminal justice society of India is an NGO organization which filed a plea before the supreme court to make amendments of sec 375 and antirape laws to be gender neutral .The Hon'ble supreme court recognizes the merits of petitioners plea even requested the parliament to consider the same

CONCLUSION

India as a developing nation has been taking up reforms and measures with respect to social, economic, political and cultural development .It is striving to eliminate all that hinders its progress and the progress of each and every citizen of citizen of the nation .Amidst such endeavors with all the noble pursuits it becomes our duty to shed false beliefs and contribute equally to its development Gender equality in all forms and treatment without any biasness be it

¹² (WP (CRIMINAL NO)28/2019

¹³ (AIR 2014 SC 1863)

¹⁴ W.P.(CIVIL)NO 1262/2018

men or women ,equality means both gender at par .The apparent subjugation ,oppression of women and denial of any rights to them and then with the uprising in the violence against such oppression and protection of men receding in the background .There is an urgent need for the laws to be gender neutral and not gender specific .Be it any subject matter that the laws deals with ,both men and women have the right to equal protection though gender specific laws has been misused to a great extent and that too cannot serve as justifiable on the part of legislature which has a duty to protect every citizen taking into account any slightest possibility .The duty of the state is to protect all its citizen and even to deter them from committing any offence against any other citizen and that implies that citizen can belong to any gender .What has been neglected by all is fact that men are not provided any protection under law when it comes to sexual violence They are human beings too and are equally vulnerable at the hands of the same or opposite sex and are yet deprived from any protection .This being due to the fact that they have been considered an epitome of superiority, their gender has been considered to be stronger and superior .This results in the absolute denial and grave injustice for those men who are victims of sexual violence as there is absolutely no legal mechanisms can resort to face of any such sexual violence .Even if he does the society would mock him he is made to suffer in silence .The number of crimes against men has been rising but the same have not been reported and there is no demand by the society for reforms in that direction .There is a need of hour to consider all sexes as human beings and the labels of superiority and inferior and gender roles need to be discarded at the earliest. Laws have been formulated and will continue to be formulated addressing several issues which concern the society and that is vital too but change can only be expected when each one of us resolve to bring about change in the mindset. India need gender neutral laws on every subject to establish the true meaning of gender equality in the society. Gender equality isn't a concept peculiar to the upliftment of women, it is on the other hand establishing a just and fair order in the society where both the gender enjoy equal status and opportunity. There is a definitional rigidity of sexual offences incorporated in our code which serves as the reason for the escapade of sexual offences which are not heterosexual in nature. Sexual violence can be committed even against the natural order of sexes. It should incorporate homosexual abuses and women perpetrators of sexual offence. we are part of society that has segregated everything on the basis of sex .But we fail to realise that there is no law of nature which defines the physical and emotional pain of rape is gender biased Gender neutral laws are the need of the hour. everyone need to be protected under laws irrespective of their sex, creed, because sexuality of a person has nothing to do with the amount of pain suffered by a person., elimination of social stigma,

generating awareness and proper sex education. whenever there arises any threat to the society, the should comes to the forefront to address the need of curbing the menace of threat. This process ensures safeguarding the interest and rights of people and as men are facing sexual violence, there must be a need to curb theses, arose and need of the laws were enacted to bring gender neutrality.

