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# **GENDER NEUTRAL RAPE LAWS:** **BEYOND THE BINARY**

AUTHORED BY - SAMIKSHA R

## **1. INTRODUCTION**

### **1.1 ABSTRACT**

In India, Rape is something which is committed by a man against a woman. The general view of the society is reflected in the rape laws of the country. The existing rape provisions of India recognise women as victims and men as perpetrators. This study examines and analyses various rape provisions, the rationale behind it and whether this differentiation of genders is necessary. If such a difference should exist, the study also focuses on assessing whether the existing rape provisions are sufficient and reasonable to protect the rights of the people. One such law is section 375 of the Indian Penal Code which specifies that rape is sexual intercourse with a woman, which clearly states that a victim of rape is always a woman. This provision is non inclusive and there have been a lot of developments in the society with the recognition of different groups of people such as the LGBTQ+ community. The present rape laws ignore and omit to take into consideration the fact that a victim and perpetrator of such a heinous crime can be anyone regardless of gender. The safeguards to protect the rights and safety of men and non-binary genders is insufficient and is biased towards one gender. This further infringes the constitutional rights given to a citizen of India. Hence this study focuses on the need for the existing rape laws to be amended with the objective of providing better and reasonable safeguards to all people regardless of gender and to sufficiently protect the rights of men and LGBTQ+ community. The argument here is that a change in the rape laws in India is necessary as the rationale behind the existing laws have flaws which are to be amended to make the rape laws more inclusive and gender neutral.

### **1.2. KEYWORDS**

Rape, gender neutral rape laws, LGBTQ+, sexual offence, non-binary gender,

### **1.3. RESEARCH PROBLEM**

Rape is considered to be one of the most serious crimes in India however it is assumed that rape

is something which is always committed by a man against a woman and it is never recognised that men as well as other non-binary genders such as people belonging to the LGBTQ+ community may also face similar situations. This mindset of the society is also very clearly reflected through the existing rape laws in India. One such law is section 375 of the Indian Penal Code which specifies that rape is sexual intercourse with a woman, which clearly states that a victim of rape is always a woman and ignoring the fact that a victim of such a heinous crime can be anyone irrespective of the gender.

There have been several cases of woman being the victim of rape, however cases of men as well as non-binary genders being the victim of the same crime are being increasingly brought to light. The existing provisions failing to recognise this, create a gap in the existing legislations.

This paper focuses on how anyone, regardless of gender can be raped and emphasises on the need for gender neutral rape laws. The Constitution of India prohibits discrimination on the grounds of gender and also provides the right to equality as well as social security. The current laws, by omitting to include and provide safety as well as protection to genders other than a woman, are violative of the supreme law of the land.

#### **1.4 RESEARCH QUESTIONS**

1. What is rape as a crime and whether current existing rape laws in India sufficient and justified?
2. To what extent do public perceptions as well as attitudes towards gender roles influence regulations and laws in India?
3. Whether sufficient protection and safeguard is given to all the genders, including men and non-binary genders?
4. Whether there is need for gender neutral rape laws in India?

#### **1.5 RESEARCH OBJECTIVES**

1. To analyse what is rape as a crime and the effectiveness of the current rape laws in India in ensuring protection and safety of people regardless of gender.
2. To examine reality gap where the rape laws just focus on females being Victims and ignores the reality of men and non-binary genders being a victim as well.
3. To assess the rape laws in different jurisdictions such as Canada, USA and UK.

4. To investigate the experiences and perspectives of male and LGBTQ+ survivors of sexual assault and rape in India.

## 1.6 RESEARCH METHODOLOGY

The research method used for this research is doctrinal research. Doctrinal research is one which analyses and interprets legal statutes, principles as well as precedents in order to develop a comprehensive understanding of these legal doctrines and their applicability to a specific legal system.

## 2. BACKGROUND

One of the main characteristics of Indian society is that of patriarchy. The historical evolution of Indian society clearly depicts the evolution of a patriarchal society. Even till this day, while some changes can be seen in the urban area, the conditions in the rural areas still very clearly show male dominance and patriarchy. However, while it is true that women have suffered in terms of opportunities, access as well as equality due to patriarchy, it cannot be ignored that men too have faced problems due to patriarchy being deeply rooted to Indian society.

The general notion of the society as well as the law makers is that women are the only group to suffer due to male dominance in the past as well as in the present. There is complete ignorance of the fact that men as well as other non-binary genders such as LGBTQ+ community also suffer due to patriarchy.

The term patriarchy has certain pre-fixed characteristics and notions attached to it. The term portrays unrealistic standards as well as characteristics, both physical as well as mental, to men. One such standard is that of stereotypical masculinity. Instances of patriarchy have developed certain toxic standards related to men which makes the society believe that heinous crimes such as sexual assault or rape cannot happen to men.<sup>1</sup>

Rape and sexual assault are concepts which are highly associated only with women. The society looks at such crimes as something that happens only to women and the mentality of the people is such that they cannot even fathom sexual assault and rape against men. Rape is a very sensitive

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<sup>1</sup> Sakshi Jain, *Need for Gender Neutral Rape Laws*, 7, ISSN, 2581, 5504 (2019)

as well as a diverse concept and this can be witnessed through the various amendments made to the rape provisions over the years. It is a complex concept as it may involve a number of different aspects to it. It was due to the Nirbhaya case<sup>2</sup>, where significant changes were brought to the rape provisions to include juvenile men as perpetrators as well as punishment for non-penetrative rape. This case redefined rape and made the laws more stringent to protect women. This is considered to be one of the most important cases which brought to light the gravity of the sexual offences being carried out against women and highlighted the need to implement guidelines to protect the safety of women.

However, inspite of significant changes in the rape laws, the rape provisions continue to recognise only women as the victims and men as the perpetrators. The legislations fail to take into consideration male on male rape, women on male rape, women on women rape and rape against the LGBTQ+ community. The laws continue to ignore the inclusion of men as victims of rape due to their pre-defined notions about men and ignore the inclusion of LGBTQ+ community because they are considered to be outcasts. The people belonging to the LGBTQ + community, even though a minority, have the right to be treated equally and not be discriminated against.

Women being suppressed by the patriarchal society is not a sufficient enough reason to ignore and exclude men from being recognised as victims of sexual assault and rape. Further people belonging to the LGBTQ+ community are being easy targets of sexual assault as well as rape due to insufficient guideline for their protection and safety. The perspectives, experiences and instances of male and LGBTQ+ community sexual assault and rape survivors cannot be ignored anymore as it is a direct violation of their rights given by the constitution as well as a violation of basic human rights.

### **3. GENDER NEUTRALITY**

#### **3.1 Gender neutrality as a concept**

Gender neutrality as a concept is the elimination of gender based discrimination and distinctions. This concept promotes and focuses on the idea that all individuals, irrespective of their genders should be treated equally and with respect. Gender neutrality aims to promote inclusive environments and challenges the pre-conceived, traditional gender roles and stereotypes to ensure

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<sup>2</sup> Mukesh & Anr v. State for NCT of Delhi & Ors (2017) 6 SCC 1

that people do not have limited rights or opportunities due to their gender identity. The argument here is that the essence of one's identity is one's human nature.<sup>3</sup> The objective of the need to make the rape laws of India gender neutral is for the inclusion of all genders, in terms of victims as well as perpetrators. The present rape laws are primarily focused on protection of women as victims and considered men as perpetrators. This needs to be reformed as any gender can be a victim as well as perpetrators of rape and sexual assault. Gender neutrality of rape laws is required for equal, unbiased protection of all the survivors of rape regardless of the victims gender or the gender for the perpetrator.

Gender neutrality in terms of rape is to recognise and implement that anyone regardless of gender can be a victim or perpetrator of rape and that justice cannot be denied on the mere fact that one cannot commit the crime due to their gender identity.<sup>4</sup>

### **3.1.1 Gender neutrality with respect to men**

One of the main reasons for the pre-fixed notions of men in general is due to patriarchy. Patriarchy is a type of society where male lineage is given more importance and considered to be the head of the family. If any man deviates from these pre-fixed notions, they attract ridicule and are made fun of by other people. Many men adhere to such gender roles due to societal pressure. However, people fail to realise that by sticking to these gender roles and not truly showing one's individuality and character, they are doing more harm than good to themselves.<sup>5</sup>

This is true even when it comes to sexual activities as well. It is considered to be an act which makes a person a man. Sexual activity is given so much importance that it resonates with the manhood of a person. Sexual intercourse is regarded as an important aspect of male behaviour and character. It is due to these unrealistic characterisation that many men feel pressured by society to indulge in sexual activities. One of the main reasons is due to the fear of ostracisation and the labelling of a person as gay or bisexual if he is still a virgin.

When it comes to the pre-conceived gender roles, the society has prescribed how and what a woman does and similarly that of a man as well. Hence it is assumed that a man is supposed to

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<sup>3</sup> Jennifer Hockenbery Dragseth, "Gender Neutrality" In *Thinking Woman: A Philosophical Approach to the Quandary of Gender*, 1, 37–76. The Lutterworth Press, 2015.

<sup>4</sup> Rana & Upmanyu, *Gender Neutral Laws - A Critical Study India*, 2, ISSN, 2582, 6433 (2022)

<sup>5</sup> Singh, M. P. "Gender, Law and Sexual Assault." *Economic and Political Weekly* 32, 11, 543, 550 (1997)

be strong physically and mentally and its impossible for a man to be raped by another person. In India, young boys are told “only girls cry”, “boys are strong and never weak”.

Growing up listening to the society engraving this in their thoughts, men believe that not being okay and mentally disturbed or showing emotions and crying makes them weak and this can lead to people excluding them.<sup>6</sup> When men are forced to indulge in sexual activities due to societal pressure or are forced to penetrate, it is considered and seen as a privilege and an act which is considered manly. However, in reality, being forced to penetrate or indulge in sexual activities should be considered to be rape.

United States statistics proves that 54,51,000 men reported being forced to penetrate and 15,81,000 men were penetrated by others in the United States.<sup>7</sup> If someone is being forced to penetrate, this should also be considered to be rape. However it is unfortunate that there is no data available which provides information regarding male rape victims or sexual assault victims of India. This is mainly because, many instances go unreported due to the fear of being called weak and liars as the society considers men as perpetrators.

An active role in the hesitation of male victims to report and talk about their assaults is played by the media and the Indian cinema as well.<sup>8</sup> Men are not usually reported in the media when they go through sexual assault and even if they are, then they are blamed for the act that has happened to them. The Indian cinema industry showcase sexual violence as a joke especially when it involves a man. Statistics show that 86% of the films made in India use sexist jokes. These acts further re-establish the stringent gender roles and make it problematic for the society as a whole. These instances and portrayals play a very important role in shaping the minds of the society. One such instance is in the movie *Badrinath Ki Dhulaniya*, which is a movie acted by very popular, influential actors who portray that a molestation of a man is a joke.

Even though these movies are made with the intention of making the audience laugh, they fail to take into consideration that such a portrayal sits in the mindset of the people to be something which is considered to be a joke and not a serious issue. This will lead to the imitation of the same

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<sup>6</sup> Monika Mishra, *Gender Roles in Modern Indian Society*, Int J Recent Sci Res. 10(11), 35747-35749 (2019)

<sup>7</sup> Aditya Raj, *Gender Neutral Rape Laws: Not As Simple As You Might Think*, FIRST POST, Aug 28, 2022 at 11:50 am

<sup>8</sup> Nikunj Kulshreshtha, *Ought the Rape/Sexual Assault Law in India be Gender-Neutral?*, SSRN Electronic Journal (2019)

in real life with the perception that the act is acceptable.

Further it is seen by society that men are always associated with sexual activity and hence it makes more sense when a man is indulging in such activities. It is an assumption that the concept of consent does not apply to men. People think that a man, no matter what, has given a forever consent for sexual activities. When a man voices his discomfort or disapproval towards an act, it is considered as a joke and not taken seriously.

One of the main changes brought to the rape provisions of India was due to the Mathura rape case<sup>9</sup> which brought to light the fact that absence of injuries on the body of a victim woman does not amount to consent. In the same manner, an arousal which can be a reflex action to fear, cannot be considered to be consent. There is clear gender discrimination by the state as it tends to give more importance to the consent of women as against consent of men. This shows that consent of men as a concept is non-existent in India.

Another presumption made about men is that they are not similarly affected by rape. This notion is prevalent because of the general notion that men do not mind even if it is non-consensual sexual intercourse. However, studies and research shows that such an instance has a very big impact both physically and mentally. Male victims of rape show signs of health issues, depression, anxiety, self-blaming, sexual dysfunction and many more. Even though the response mechanism of men and women is different, one cannot judge one to have a more serious impact and the other to have less impact. Hence men too are affected by rape and gender has no role to play.

Further, an important aspect is that rape is seen as something which is very bad by the society and often the victim is blamed for such a heinous crime. However, now we can see some improvement in the reporting of such crimes by women but the same cannot be said for men. This is because of two important reasons, the first reason is the shame of not being able to prevent such a crime and the second is due to the predefined notion of masculinity. It is often seen that when a man is raped, his masculinity and sexual orientation is questioned. Due to these reasons, many of these crimes go unreported.

Due to such gender roles, the reality of the heinous crimes on men are ignored and hidden.

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<sup>9</sup> Tuka Ram and Anr v. State of Maharashtra, AIR 1979 SC 185

However, in the past few years some developments can be seen in reporting and recording of such crimes. Though the number of cases are minute, it shows some hope for reformation of the society and their mindset to recognise and give importance to male victims of rape.

The United Nations Conventions on Rights of the Child, in the year 1992 carried out a first ever government funded and sponsored research to study child abuse in India. This survey showed that more than 53% of youth face sexual abuse and assault out of which half of the victims were boys.<sup>10</sup>

A POCSO court in Indore, Madhya Pradesh, sentenced a 24-year-old woman to ten years in prison for allegedly sexually assaulting a minor child.<sup>11</sup> In a sexual assault case involving a 10-year-old boy in northeast Delhi, police caught two minors in the Seelampur region.<sup>12</sup> A 12-year-old child was repeatedly raped after being sedated by an ulema at a madrasa in North Delhi.

All these three cases bring to light the fact that young men as in fact older men can also be raped by women or by other men. The fixed gender roles cannot apply to everyone and there can be men who are sensitive and could be in a vulnerable position. It is important to note that when a minor or a young boy is capable of being sexually assaulted and raped, it is very important to not that the same could happen to older men as well.<sup>13</sup>

In the name of retributive justice, it was alleged by the parents of ram Singh, the accused of Nirbhaya gang rape case, that their son and the other accused were raped inside jail before they died. This brings to light the sodomy and rape in jails which is very highly prevalent. Rape of men, which already goes unreported and unrecorded, rape of men in jails further adds to the problems.

Further, a survey conducted for the inmates in the Arthur Road Jail in Mumbai show that 72 percent of inmates said that men frequently engage in sexual activities and 11 per cent of the

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<sup>10</sup> Aditya Raj, *Gender neutral Rape Laws: Not As Simple As You Might Think*, First India, 28 Aug, 2022, at 11:50 am

<sup>11</sup> Shruti Tomar, *MP: Woman sentenced to 10 years in jail for sexually assaulting a minor boy*, Hindustan Times, Mar 21, 2023, 4pm

<sup>12</sup> Himanshu Mishra, *Cousin among 3 minors who gang raped 10 year old boy from Delhi*, India Today, sep 25, 2022, at 8pm

<sup>13</sup> Kumar G P, *Ram Singh's Death: Rape and ugly sexual violence in Indian Jails*, The First Post, <http://www.firstpost.com/india/ram-singhs-death-rape-and-ugly-sexual-violence-in-indian-jails-657071.html>

interviewees said that he were sexually active with other men.

A man from Punjab's Jalandhar has alleged he was kidnapped, drugged, raped and then dumped at a secluded place by four women.<sup>14</sup> He claimed that the women, with an excuse of asking for an address, sprayed a liquid on his face after which he found himself in the car. However he did not file a complaint but just opened up about this incident to the media.

Such instances show that sexual assault of men as well as rape of men is very much prevalent in the Indian society and it is the need of the hour to reform the existing rape laws to make them more gender neutral. If necessary actions are not undertaken, this can lead to a lot of injustice and increase in the number of sexual crimes against men.

### **3.1.2 Gender neutrality with respect to LGBTQ+ Community**

The LGBTQ+ community consists of non-binary genders. This community may include people who identify themselves as lesbians, gay, bisexual, transgender, queer and many more. Being a minority group in India and highly unaccepted and ostracised group in India, violence and violation against them is something they face on a daily basis. The people belonging to this community face harassment, exploitation as well as lack of opportunities however the law fails to recognise this and provide sufficient safeguards.

There have been many instances of sexual assault committed by people of the same gender however, these instances go unnoticed and unregistered as there is no provision which safeguards or provides remedy for the victims. One such case is sexual assault faced by a French woman in Goa who could not get any remedy for rape inspite of filing a complain in the Goa police station.<sup>15</sup> There is no provision in effect to help sexual assault victims of the LGBTQ+ community due to which there is advantage taken by the perpetrators to commit such grave crimes against them. The French national could not get any remedy for the rape as no provision exists which can hold a woman guilty of rape.

Due to this, a case was filed under sexual harassment and wrongful confinement which have much lesser punishments compared to the offence of rape.

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<sup>14</sup> Nakshab Khan, Punjab man claims he was abducted and gangraped by 4 women, Mirror now, nov 24, 2022 at 11am

<sup>15</sup> Avantika Mehta, *Why It Is Time For India Too Consider Gender Neutral Rape Laws*, Article 14, Sep 7, 2021

Statistics show the percentage of people belonging to the LGBTQ+ community who have faced sexual assault and the result shows that 45% of lesbian women, 61% of bisexual women, 26% of gay men and 37% of bisexual men have experienced sexual assault and physical violence.<sup>16</sup> Through this data, the prevalence of sexual violence against the LGBTQ+ community can be evidently seen.

In the case of *NALSA v. Union of India*,<sup>17</sup> the supreme court, recognised the rights of the transgender communities and laid down that any discrimination will be a violation of Article 14 and 21 of the constitution. By excluding the LGBTQ+ community from being considered as victims or perpetrators of rape leads to the violation of their rights and gives rise to inequality. The binary nature of sexual violence and the omission of LGBTQ+ community people as victims in rape provisions, leads to lack of recognition of the LGBTQ+ community and this highlights the drawbacks within the legal system which makes it difficult for the victims to seek justice. The gender biased laws further reiterate the societal stigma against the people of the community. By the non-inclusion of these people, it is reinforcing the traditional gender roles and identities which open up spaces for discrimination on the grounds of gender.

Due to the legal biases as well as stereotypes, the LGBTQ+ community victims hesitate to report the crimes and their experiences. Further, if they decide to come forward and report the crime to seek justice, they are faced with insensitive and ignorant law enforcement and lack of gender sensitive facilities also further create hurdles in seeking justice. Presently, transgenders continue to be locked up in prisons along with men which facilitates and increases the instances of sexual assault against them.

Further the lack of proper guidelines and safeguards for the LGBTQ+ community also leads to refusal by health care providers in treating the victims which leads to health risks. Due to such discrimination and biases, it deters them from accessing rehabilitation and counselling facilities as well which is harmful for their mental, emotional as well as physical wellbeing.

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<sup>16</sup> Ali Ibrahim, Step Towards Gender Neutral Sexual Offences In India, 8, *IJCRT*, 3234, 3240, (2020)

<sup>17</sup> *NALSA v. Union of India* AIR 2014 SC 1863

## **4. STANDPOINT OF LAW**

### **4.1 SECTION 375 OF IPC**

The word rape is derived from a Latin word which means to seize. The literal meaning of rape is forcible seizure. The word rape is commonly used to refer to violation of a woman without her consent by the use of force, fear or fraud. Indian legislations also provide the meaning of rape as well as the punishments for the commission of such an act. Section 375 of the Indian Penal Code provides the definition of rape. This provision, in the year 1983 as well as 2013, was amended to make the rape provisions in India more inclusive and wide.

Even though the legislature recognised the need to amend the rape provisions to make them more inclusive, they failed to recognise the need to make the rape laws gender neutral. It is still a general notion that the perpetrator is always a man and the victim is always a woman which does not reflect the true reality. Section 375 of the Indian penal code denotes that any other gender, other than a woman cannot be a victim of rape and that a woman cannot be a perpetrator. These provisions as well as the stereotypes relating to men forces them to deny or hide the sexual assault that they face. stereotypes such as notions like men are not vulnerable or that they always want sex and relating sexual assault with masculinity are some of the taboos in the society with pose as an obstacle for male survivors to come out and speak about it or report it. The insufficient rape laws providing protection and justice to the victims, regardless of their gender, leads to the victims hiding the crime and not reporting it. This leads to injustice and increase in the commission of rape.

There are major flaws in the provision firstly, it excludes non consensual sexual acts committed by a woman against a man and secondly ignores the fact that the provision is gender biased as it is clearly in favour of woman. Thirdly, the provision does not mention the possibility of a non-binary gender to be a victim or a perpetrator. Fourthly, the rape provisions are gender specific where it clearly provides that a perpetrator is a man and the victim is a woman. Lastly, it leads to injustice and increase in crime rates.

This law pays a vital role in highlighting the need for gender neutral rape laws. The provision, being gender specific, is ignorant of the reality where men and non-binary genders continue to be affected, physically, mentally as well as emotionally due to rape. Rape violated the right to life and dignity of a person and this is a right which is enshrined by the Indian constitution. Regardless

of gender, this right to life and dignity has to be protected and the act of rape violates this right of a person. This provision is important to show how the existing rape legislations are gender specific, rigid and non-inclusive

#### **4.2 NEED FOR GENDER NEUTRAL RAPE LAWS**

The prevalence of male and LGBTQ+ rape in India cannot be ignored and denied anymore. It is important to focus on striving to achieve gender neutral rape laws in India. The first step in achieving equality, protection and safety to all the genders is to gender neutralise all sexual offences. All current laws pertaining to sexual offences particularly rape, designate only women as the victims and men as the offenders. This needs to be updated to reflect the fact that anyone regardless of gender can be classified as either a victim or an offender.

Importance should be given on balancing the rights of all the identities equally against sexual assault as well as rape. There should be no distinction made on the basis of the prefixed gender roles in the society. The next important step towards gender neutral rape laws is to eliminate the influence of gender roles on the existing laws as well as the mindset of the people.

In addition to this, regular surveys and statistical data collection by the government regarding sexual assault will help the state to determine the actual severity of the crimes committed and provide Information about the number of people reporting cases. It is also crucial to run gender sensitisation programs to break free from the rigid gender roles that are prevalent in the society as well as awareness campaigns for all the genders to inform them about their rights and legal remedies. Further it is also important to analyse the positives and negatives of the gender neutral rape laws of various different countries to ensure that the best and most appropriate reform is introduced in the India.

#### **4.3. GENDER NEUTRAL RAPE LAWS IN DIFFERENT JURISDICTIONS CANADA**

Rape and sexual offences law was reformed in the year 1983 in order to make the laws more progressive and gender neutral. One of the main changes was the replacement of the term rape with sexual assault and providing stricter punishments for the commission on this crime. Further the rape and sexual assault laws of the country do not specify any gender for either the victim or the perpetrator to make in more inclusive. Canada has also been successful in recognising the vulnerability as well as the needs and rights of indigenous groups as well ad the LGBTQ+

community when it comes to sexual assault. The Canadian laws have special provisions which provide safety and protection to these groups.

## UNITED STATES

When it comes to introducing gender neutral rape laws in the US, the country has come a very long way. For a very long time, there was a usage of gender biased language in the laws of the states favouring women and excluding male and non-binary genders. However, due to various cases and legislative efforts, there can be seen some improvement in this regard. For example, provisions in the education amendments of 1972, prohibits sex based discrimination which included rape and sexual assault in educational institutions, providing equal protection to both males and females.

Further the #MeToo movement which started in the US, led to a growing public awareness of sexual assault and brought to light the true realities of rape. numerous states have now revised their legislations to make it more gender neutral to provide protection for all irrespective of gender. However, the gender neutral laws are not introduced throughout the US and vary state by state. Laws related to rape apply to the LGBTQ+ community as well but yet again, it varies from state to state.

## UNITED KINGDOM

The legal system in the United Kingdom acknowledges that rape is a crime that may affect any person regardless of their gender. The definitions of rape and sexual assault In the Sexual Offences Act 2003, which is applicable in England and Wales, does not include any information on the gender. This is a very important and a significant step towards gender neutral rape laws in the country. However at the same time, the act only recognises penetration of the mouth, anus or vagina by the perpetrator and excludes the usage of objects and non penetrative rape.<sup>18</sup> one of the major drawbacks is that only a man can be charged for rape, other genders can only be charged with sexual assault which has a lesser punishment.

When it comes to the UK, the rape laws are not truly gender neutral and inclusive. There needs to be further changes in the laws such as the recognition of any gender being the perpetrator and

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<sup>18</sup> Sexual Offences Act 2003

the recognition of non-penetrative rape. However the laws do recognise that anyone regardless of gender can be a victim, this needs to be incorporated by the Indian provisions as well.

## **5. CONCLUSION**

This paper tries to bring to light the need for gender neutral rape laws in India. The paper outlines the history and the amendments made to the rape provisions over the years to bring to light the fact that the rape provisions, inspite of being amended fail to include men and LGBTQ+ community.

With the help of various cases, this paper tries to bring to light the reality of men and LGBTQ+ community rape cases and how they continue to be ignored by the state. As of now, there is not safeguard provided to these people to protect them against sexual assault and rape.

The case of Priya Patel v. State of Madhya Pradesh shows the attitude of not just the people of the society but also of the state towards instance of male rape.

The paper further goes on to discuss how the gender roles in the society is one of the main barriers for gender neutral rape laws in India. The mentality of people towards men and about men make it difficult for people to see the reality and accept that men also face sexual assault. The belief that men cannot be raped and women cannot rape me, the absence of the concept of consent for men and the presumption that men face sexual assault differently than women increasingly shun people away from reality.

The LGBTQ+ community are also facing similar situations as men due to their non-inclusion in the rape provisions. By not recognising same sex sexual assault, it is violating the rights of the people and is facilitating their lack of recognition. It also further facilitates the commission of crimes against them as there is no law which prohibits such crimes against them. The challenges which are being faced by men as well as the LGBTQ+ community need to be recognised and there needs to be a positive step taken towards this issue to provide protection to all irrespective of gender.

Further this paper also explores the legislations of different countries like the USA, UK and Canada to shed light on the gender neutral rape laws existing in these countries and how it's time

for the same to be adopted by India.

Lastly, there are suggestions which are provided to ensure that there is introduction of gender neutral rape laws. A mere change in the language of laws and provisions is not sufficient to bring about this change. There needs to be a complete change in the mindset of the society as a whole to truly achieve the goal of providing protection to all irrespective of gender.

