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An Analytical Study On The Need For Gender-Neutral Rape Laws In India

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Abstract

Every person is afforded equality before the law and the right to live with dignity under the 1950 Indian Constitution. Additionally, every person of the country is guaranteed the freedom from discrimination based on their place of birth, race, religion, caste, or other characteristics. However, men and the transgender populations in society are consistently denied their rights when it comes to crimes like sexual harassment, voyeurism, stalking, sexual assault, and rape cases. Contrary to popular belief, males can also be victims of sexual offenses. It is a common misconception that women are always the victims and men are always the perpetrators. Rape has long been regarded as a female-centric crime, particularly in India. Rape, as defined in Indian Penal Code Sections 375 and 376, is predicated on the assumption that only a woman may be a victim and only a man can be a perpetrator. Furthermore, sexual harassment, voyeurism, stalking, and sexual assault prohibitions are gender-specific, stating that only a male can be an offender and only a woman can be a victim. This article examines India's antiquated rules regarding sexual offenses and how they deny males and transgender people access to justice.

Keywords: the right to live, sexual harassment, misconception, Indian Penal Code

Introduction

“It is better that ten guilty persons escape than one innocent suffer”- Sir William Blackstone¹

“The only stable state is the one in which all are equal before the law” - Aristotle

In India, rape is one of the most prevalent crimes and a significant global problem. Most often, rape is perceived to be a crime committed by men against women, but has anybody ever considered the opposite? Rape was once thought to be a crime committed only by men against women, but as time has gone on, it has become clear that other genders, including

¹ English Jurist William Blackstone expressed the maxim in his seminal work “Commentaries on the Laws of England

men, homosexuals, and the transgender community, are also negatively impacted by this crime. In reality, anyone can be raped, regardless of their age, gender, or sexual orientation. Although there are many occurrences, the majority of them go unreported because victims fear losing personal dignity if somehow the community discovers they were the victims of this heinous crime. Rape committed on non-females frequently goes undetected, therefore the community has very little awareness of it. However, it is imperative that the public be made aware of such atrocities but also that appropriate law enforcement be established in order to prevent possible occurrences of such a horrible crime. First and foremost, we must acknowledge that rape may occur anywhere—in a classroom, office, prison, job, coaching, etc.—and against anyone, regardless of gender. Patriarchy impacts men in a special and equal way, thus it does not only affect women. Men are expected to be stereotypically masculine in patriarchal designs. A guy who cannot protect himself from sexual assault is not a man; a man who desires sex with a woman is insufficiently manly, and a man who has been raped is further emasculated. Male victims are discouraged from coming forward to report sexual offenses because they believe that males should be strong and aggressive. On observation, it was noted that on grounds of several judicial precedents, it was observed that Rape is not a crime against the personam of women but it is against the whole community. One may only comprehend this problem and its significance after letting go of stereotypes about sexual offenses, such as the idea that they can only be committed against women. The different Indian statutes provide protection for women, and they have the right to make a complaint if their rights are violated by anyone. Men's rights in comparison to women's rights are not explicitly stated, notwithstanding the fact that men and women are guaranteed the same constitutionally protected rights. Due to the patriarchy that permeates Indian society and the fact that women are primarily exclusively seen as the victim and men as the perpetrator, gender neutrality is absolutely necessary for rape legislation. The main theme behind this research paper is to debate whether gender neutrality should be incorporated into India's rape and sexual assault laws. The author aims to use doctrinal research in his thorough analysis of his issue. The purpose of this paper is to comprehend and ascertain the extent of legal protection for rape victims of all genders. The research intends to perform a qualitative study in order to analyze the research's purpose and support the author's claim that male or other gender victims of rape are not covered by the legislation's provisions for their protection. The author will mostly employ texts and secondary sources for the data that will be used in the investigation. The current research's data-gathering strategy has solely relied on qualitative techniques. As a passive spectator, the author relied on "existing facts" in the form of laws,

court rulings, and other academic papers. The author obtained his information from reputable databases, including the official websites of the national, state, and local governments for statutes, SCC Online and West Law for case law, Jstor, Heine Online, and other well-known databases of journal articles for research articles. The main techniques used by the author to analyze the goal and issue of the research are content and thematic analysis. By means of content analysis, the study aims to examine and evaluate the pertinent clause that addresses the necessity for gender-neutral rape legislation in India as well as the protection of male or gender victims of rape. It aims to comprehend the rule of interpretation that the judiciary and government must employ in determining the application of certain components in terms of rape victim protection.

Research Question

To what degree does the provision in the Indian Penal Code, 1860, Sections 375 and 376 dealing with rape victim protection address the protection of male or other gender rape victims?

INDIA'S RAPE LAW HISTORY

Rape has long been seen as a crime committed predominantly by men, particularly in India. According to Sections 375 and 376 of the Indian Penal Code, rape is premised on the idea that only women can be victims and only men can perpetrate the crime. Furthermore, rules governing sexual harassment, voyeurism, stalking, and sexual assault are gender-specific, saying that only men are permitted to conduct these crimes and only women are permitted to be victims.² All nations have acknowledged the need for rape laws. Rape has a history that predates the development of human civilization. In the past, in addition to being committed for sexual pleasure, this crime has also been perpetrated in order to establish dominance or authority over another person. Because of this, historically, rape has been seen as a crime committed only by men against women. This historical idea also serves as the foundation for Indian rape laws.³

² Navin Kumar Jaggi, why there is a need for gender neutral laws in India, Legal services India, <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

³ ANOOP CHANDRAN S, GENDER NEUTRALITY IN RAPE LAWS : A PRESSING PRIORITY, <https://nal.net.in/globalpanel/public/images/ARTICLE%20ANOOP%20CHANDRAN%20S.pdf>

The Indian Penal Code was passed in 1860, marking the beginning of the country's "rape laws." The definition of rape remained the primary point of concern even after the code underwent numerous modifications through amendments after 1860.

Since the 1980s, the Indian Women's movement has focused on changing the country's rape laws.⁴ Women's organizations have fought to expand the definition of rape for a very long time.⁵ Prior to the 2013 amendment⁶, only the penile-vaginal form of penetration was considered to be rape.

A significant case in the history of the Indian women's rights movement is the Mathura rape case⁷. In this case, the Supreme Court determined that Mathura, the girl who had been sexually assaulted by three officers, had submitted and given her consent because there were no signs of resistance on her body. According to the ruling, consent is implied when there are no injuries. Four legal academics expressed their disapproval of the controversial case in an open letter to the Chief Justice of India.⁸ Once the prosecution had satisfied its duty of showing sexual intercourse, there was a demand that the weight of proof regarding consent is shifted to the accused.⁹ The activist also demanded that rape hearings take place behind closed doors and that the names of the rape victims not be released to the media.¹⁰ Another request was to disregard the victim's past sexual behavior when determining whether or not the offender committed rape¹¹. The rape law was significantly changed as a result of this.

1983's Criminal Law (Amendment) Act

The two most significant changes brought about by this legislation were that section 327 of the CrPC now requires that rape trials be conducted as "in-camera proceedings," and section 228A of the CrPC now makes it illegal to reveal the victim's identity. In addition to these, section 376(2) of the IPC increased the sentence for custodial offenses, and section 114A of

⁴ Agnes, F. (2002). Law, Ideology and Female Sexuality. Economic and Political Weekly, pg np:844-847.

⁵ Sakshi vs. Union of India, AIR 2004 SC 3566, Sakshi vs Union Of India on 26 May, 2004 (indiankanoon.org)

⁶ The Criminal Law (Amendment) Act, New Delhi: The Gazette of India (2013), <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>

⁷ Tuka Ram And Anr vs State Of Maharashtra, 1979 AIR 185, Tuka Ram And Anr vs State Of Maharashtra on 15 September, 1978 (indiankanoon.org)

⁸ Baxi, U., Dhagamvar, V., Kelkar, R., & Sarkar, L. (1979) An Open Letter to the Chief Justice of India, Open-Letter-to-CJI-in-the-Mathura-Rape-Case.pdf (pldindia.org)

⁹ Supra note 4

¹⁰ Haskar N (2005) Human Rights lawyering, A Feminist perspective, Writing the women's movement, A Reader, page no: 135, Zubaan and penguin books India Private Limited

¹¹ Supra note 4

the Indian Evidence Act of 1872 added a provision that presumed the absence of agreement in certain circumstances. In addition to this, the prosecution turned the burden of demonstrating consent over to the accused. This was one of the most significant changes to Indian rape laws in the years following independence.

The 2002 Act to Amend Indian Evidence

The Indian Evidence (Amendment) Act of 2002 prevented the defense from asking the prosecutrix questions regarding her overall moral character and sexual past during cross-examination. The amendments invalidated section 155(4) of the Indian Evidence Act¹² of 1872, which in theory stated that the victim's sexual history was significant since it provided direct insight into her moral character.

Reports

According to the 172nd Law Commission Report, both the victim and the perpetrator of rape should be treated equally under the law. For the victim, the Justice Verma Committee Report proposed a gender-neutral law, while for the offender, it recommended a gender-specific statute. None of these, nevertheless, were included in the national legislation.

2013's Criminal Law Amendment Act

A significant revision to the nation's rape legislation occurred in 2013. The gang rape and murder of Nirbhaya, a 23-year-old physiotherapy student, in the center of the capital city in 2012 shocked both India and the entire world. The national government established the Justice Verma Committee to reform India's sexual assault legislation shortly after receiving intense criticism and ensuing outrage from socio-civic organisations. As a result, significant amendments to the IPC's section 375 definition of rape and its punishment were recommended. In addition, the country now has fast-track courts to handle rape cases.

After the J.Verma committee issued its recommendations, the parliament passed the Criminal Law (Amendment) Act in 2013, which expanded the definition of rape and made it a considerably more serious crime. The definition of rape prior to the 2013 revisions only included penile-vaginal penetration. However, the term now has a broader scope because it includes all forms of sexual assault on women, not just penile-vaginal penetration.¹³

¹² Indian Evidence Act, 1872

¹³ Supra note 3

LAWS ON RAPE IN INDIA

The Indian Penal Code's Section 375 defines rape as an offense, while Section 376 of the code punishes it. According to Section 375 of the IPC, "a male is considered to have committed "rape" if he—

(a) forced a woman to have her vagina, mouth, urethra, or anus penetrated by his penis, to any extent; or

(b) forces a woman to do so with him or another person, or puts, to whatever extent, any object or part of the body—other than the penis—into her vagina, urethra, or anus;

(c) causes penetration into a woman's vagina, urethra, anus, or any other portion of her body by manipulating any part of her body, or compels her to do so with him or anyone else; or

(d) applies his mouth to a woman's vagina, anus, or urethra or compels a woman to do so with him or another person in any of the following seven situations:

(1) Opposite to her will.

2) Without her permission.

(3) With her consent, if her consent was obtained by making her or anyone else in her life fearful of harm or death.

(4) With her consent, even if she is aware that he is not her husband and that she is only giving it because she mistakenly thinks he is another man to whom she is legally wed or believes she is.

(5) With her consent if, at the time of providing such consent, she is incapable of understanding the nature and effects of that to which she provides consent due to her state of insanity, intoxication, or the administration of any stupefying or unhealthy substance by him directly or through another.

(6) With or without her permission, if she is under the age of 18.

(7) If she is incapable of expressing consent.”¹⁴

It is evident from the definition of rape in Section 375 of the Indian Penal Code that rape is always perpetrated by a male against a woman. Forced sexual contact between a man and a woman is not regarded as a rape but forced sexual contact between a man and a woman is.

¹⁴ Section 375 of Indian Penal Code, 1860

The Indian Penal Code's definition of rape, found in Section 375, has two main flaws: it ignores non-consensual sexual acts committed by women against men, and it always views women as the victim. As a result, many men are accused of false rape in an effort to exact retribution or gain an unfair advantage. It is not gender-neutral.¹⁵ According to India's definition of rape, a person who fails to identify as a woman is not entitled to legal recourse as a rape victim. It is shocking that the aforementioned rule entirely disregards any possible rape victim who does not identify as a woman in a time when the discussion has beyond gender binary thinking and gender fluidity is a social norm. In that regard, it reflects the long-standing patriarchal stereotype that "women" are the weaker sex, subject to molestation and manipulation at the whims and fancies of "men."¹⁶

There is no specific law in India protecting male rape victims. The exception to rules that favor women is found in Section 377 of the IPC¹⁷, which defines unnatural offenses and makes carnal contact with any man, woman, or animal against the natural order of things illegal. In addition, the POCSO Act makes sexual assaults against male children illegal, although adult males are not covered by this law. Male child sexual abuse is dealt with entirely differently than male adult sexual assault. There is no explanation for this prejudice. India should absolutely allow for the rape of adult males if it can allow for the rape of a male toddler. However, the guys are at risk due to the conservative belief that only men utilize their position of authority to oppress women. The feeling of equality promised by Article 14¹⁸ of the Indian Constitution also appears to be absent in light of all these legal provisions for sexual assault and crimes against women and children. Since all laws should be gender-neutral, those that have a higher focus on protecting women must also be aware of the prevalence of sexual offenses against males and other genders.¹⁹

The legal system's reluctance to even consider women as rape offenders is a reflection of how society views a sexual relationship, where males are consistently seen as the more dominating party rather than as equal partners in sexual activity. The law completely disregards gender

¹⁵ Nikhil Mishra, Gender Neutral Rape Laws in India: A Necessity, Latestlaws, <https://www.latestlaws.com/articles/gender-neutral-rape-laws-in-india-a-necessity>

¹⁶ RISHABH CHOPRA, The Case for Gender Neutrality in Rape Laws, The Citizen, <https://www.thecitizen.in/life/the-case-for-gender-neutrality-in-rape-laws-333857?infinite-scroll=1>

¹⁷ Indian Penal Code, 1860

¹⁸ Constitution of India,

¹⁹ Sanjana Kiran, Bridging The Gender Gaps: Rape Laws in India, Black White Legal, <https://www.whiteblacklegal.co.in/bridging-the-gender-gaps-rape-laws-in-india-by-sanjana-kiran/>

rights by refusing to recognize instances of rape involving members of the LGBTQI+ community, forcing them to rely on Section 377 instead. This clause, which decriminalizes consenting homosexual conduct, was partially overturned by the Supreme Court, but it still applies in instances of coerced sex between two males.²⁰

GENDER NEUTRALITY IN RAPE LAWS

WHAT GENDER NEUTRALITY MEANS

Gender neutrality generally refers to not distinguishing between any gender, be it a male, female or transgender considering them equal for any social position. The underlying idea underpinning the concept of gender neutrality is the 'right to equality which is also guaranteed in article 14 of the Indian Constitution. The issue of social inequality is of enormous significance and has enormous implications that cover an all-encompassing and boundless canvas because gender equality impacts every member of the community as a whole and shapes the basic foundation of a just community.²¹

When referring to legislation, the term "gender neutrality" refers to the act of being inclusive while addressing a problem that affects both sexes equally. It places a strong emphasis on the socio-economic and legal equality of men, women, and individuals of the third gender (transgender) in society. The Constitution's spirit is fundamentally gender-neutral. According to Article 14 of the Indian Constitution, no one shall be denied equality under the law or equal protection by the law, and Article 21 further upholds the right to life and personal freedom. In addition, the preamble of the Indian Constitution upholds the notion of social, economic, political, and justice—ideas that inherently also include gender justice. To avoid sex discrimination, our regulatory system, which is established on and owes its very existence to a constitutional system, must abstain from discriminating against individuals based on their gender roles.²²

The gender neutrality of the present rape legislation can be seen from two main angles. The first one is gender neutrality with reference to the victim, and the second is gender neutrality with reference to the offender.

²⁰ Supra note 16

²¹ Unknown author, Need for Gender Neutral Laws in India, Law Express, <https://thelawexpress.com/need-for-gender-neutral-laws-in-india>

²² Supra note 3

Gender Neutrality Regarding the Victim

It is regrettable that the Indian judicial system still views the offense entirely through the lens of gender, as something that only men can commit against women. The reality that males and transgender people can also be sexually assaulted and raped is still unrecognized by the law. This notion is essentially based on the historical belief that rape is an act committed to satiate intense lust or sexual desire. But in today's world, this is not at all the case. Rape can also be performed to demonstrate one's authority or superiority over another. It might be aimed at a transgender person, a woman, or either. However, it is challenging to comprehend the reality of male and transgender victimization due to the patriarchal mentality that still pervades our social environment.

Victimization of men

Men are occasionally sexually molested by women, but more typically they are assaulted by other men. Rape, as we've already mentioned, is a display of control over another person. As a result, the attackers occasionally employ firearms, physical force, or the threat of such force to control the victim. Additionally, they might threaten the victim with blackmail or use their position of authority to subdue them (particularly if they have the ability to control another person's will). Others prevent their victims from retaliating by using drugs, drinking, or a combination of the two. Regardless of how it happens, it is a violation of a man's body and free will and it may have long-term emotional effects. Below are some of the concerns related to male sexual victimization.²³

Patriarchy

In India, acknowledging male rapes is still frowned upon and is associated with negative connotations among both heterosexual and homosexual men. The sexual orientation of male victims and the gender of their attackers frequently elicit responses from the community. It could be challenging for male victims of sexual assault to come forward, especially in cultures where masculinity is strongly regarded. These have their origins in the entrenched patriarchal notions that sexual assault and exploitation do not affect men. Women can occasionally force men into sexual activity without their consent, in addition to men-to-men rapes. However, males are compelled to believe that "all sex is wonderful" by strong and

²³ Ibid

deeply ingrained social ideas. Male victims may also worry that others would question their sexual orientation and classify them as homosexual, especially if they were raped by a man, or that they will be viewed as less macho as a result of their ordeal. Men in the community may feel that they are immune to sexual abuse due to these toxic masculinity feelings.²⁴

Emotional Distress

Another societal misconception that exists in society surrounding male rape is that males are less traumatized, hence the odds of being harmed by sexual abuse are low. However, in today's social arena, this reasoning does not hold water. According to studies, the long-term repercussions of sexual abuse and assault are deleterious to any sex, with males being especially impacted due to social stigma and denial of their victimization. The male victims feel extreme remorse and embarrassment as a result of the incorrect assumptions about manliness and masculinity.

Forever consent is assumed (Men always want sex)

Another common misconception in our culture about male victimization is that "guys always desire sex." The mere arousal of the penis or ejaculation during sexual contact is said to indicate that the man truly desired sex. However, penile erection or ejaculation is a completely physiological process that can be triggered by a simple physical touch or even intense stress. As a result, it cannot be interpreted as evidence that the victim consented to the sexual assault.²⁵

The transgender population

There is enough historical and mythological evidence to suggest that India has always been a safe haven for transgender people. In truth, the Hijra community in India may trace its roots back to myths from the Ramayana and the Mahabharata. So, why are they scarcely recognized by Indian law and denied rights as full citizens of the country?

Several studies in India have revealed sexual and physical abuse against transgender people.²⁶

²⁴ Adv. Nikunj Kulshreshtha and Kalyani Pandey, Gender-neutral rape laws: A need for Indian society, iPleaders, https://blog.ipleaders.in/rape-sexual-assault-law-india-gender-neutral/#_edn1

²⁵ Supra note 3

²⁶ Shweta Kabra, GENDER NEUTRAL LAWS- HOW NEEDFUL IN INDIA?, <http://docs.manupatra.in/newsline/articles/Upload/3FE150D0-E784-49BD-8328-4134C0E87955.pdf>

Human rights breaches against the transgender community in Bangalore were investigated by the Peoples' Union for Civil Liberties Karnataka (PUCL-K). Its findings were shocking-

“In all of the testimonies that we have gathered for our report, sexual assault is a recurring, pervasive topic. Along with being subjected to physical violence, such as beatings and threats of disfigurement with acid bulbs, the hijra's sexuality also comes under scrutiny from at least prurient curiosity and, at worst, can result in terrible violence. According to the narratives, the police often humiliate hijras by touching their breasts, stripping them, and, in some cases, raping them. Such behaviors are a violation of the integrity and privacy of the person's very sexual being, whether or not there is a component of physical violence.”²⁷

Gender Neutrality with respect to perpetrator

A guy is said to have committed rape, as stated directly at the beginning of the Indian Penal Code Section 375. Rape is a crime that can only be committed by men, based on the language of this section alone. Women in positions of authority, whether professionally, physically, or emotionally, can compel men to engage in sexual activity without their consent. Therefore, the idea of gender neutrality with regard to the perpetrator involves accepting the possibility that both men and women can commit rape. There are two options here that the law does not now recognize.

- i) Female on Male Rape and
- ii) Female on Female Rape.

Female-on-Male Rape

Rape is regarded as a piercing assault on women, per definition. It is illegal for a woman to rape a man under the IPC's s.375's narrow, phallus-centric definition of the crime. Therefore, according to our existing legal definitions, if a woman forces a guy to have sexual relations with her, it would not be considered rape. The belief that it is physically impossible for a woman to rape a male may have led to the discriminatory approach to the legislation governing sexual assault. A woman can physically rape a man; it is not impossible. It is widely believed that a woman cannot physically force a guy to have sex with her without his agreement because of the way sex works. One defense of this position is that a man must be aroused in order for a woman to engage in sex and that an erection or similar sign of arousal

²⁷ ibid

signifies consent to sex. However, this is untrue. According to medical studies, arousal during a sexual assault might occur involuntarily as a result of a physiological process. For instance, a raped woman may exhibit physiological reactions like lubrication and orgasm at the time of the rape. This in no way suggests that women's consent is necessary. The Autonomous Nervous System, which is reflex-driven and responsible for involuntary functions like digestion, respiration, and heartbeat, is the only source of sexual stimulation and orgasm¹⁰. Therefore, a man's simple arousal and erection during a sexual assault is not a meaningful sign from which to infer his consent to sex. Additionally, it is believed that the anatomical differences between men and women make men physically stronger than women, enabling them to fend off any attempt by a female to engage in sexual assault. This is also not always the case, as a man may be mentally or physically incapacitated, physically weaker than the perpetrator, intoxicated, restrained, misled about the identity of the woman, etc., rendering him unable to consent to the act of his own free will.²⁸

Female-on-female rape

The Madhya Pradesh (M.P.) High Court stated in *State Govt v. Sheodayal* (1956) that a woman's modesty can be violated by another woman in violation of Section 354 of the IPC. In the case of *Priya Patel v. State of M.P.* 1992, the Supreme Court addressed the issue of whether a woman can engage in gang rape. Section 376(2)(g)'s states that "anyone" who conducts gang rape should be punished, etc. In addition, the explanation clarifies that each person who rapes a woman while acting on behalf of a group of people with a shared goal is considered to have committed gang rape. Therefore, theoretically, not every member of the group has to carry out the act of penetration. Rather, all it takes to convict someone of gang rape is the appearance of "similar intention." The court did rule, however, that a woman cannot intend to rape. Thus, it is impossible for a woman to rape another woman. Because the provision just demands the presence of a similar intention, this logic is seriously defective. Even if we accept that it is physically impossible for a woman to rape another woman, why can't she have a common purpose to do so?

While the question of whether a female may rape a male has been widely argued in the public sphere, Indian scholars and activists have mostly remained silent on this aspect of gender neutrality.²⁹

²⁸ Supra note 3

²⁹ Supra note 25

Gender neutrality in rape laws is necessary

India has signed the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social, and Cultural Rights. All of these documents uphold the inalienable right of all people to equality and human dignity. There is no denying that women are the most vulnerable and susceptible demographic in India to rape. Nonetheless, a sizable proportion of homosexual and heterosexual men, as well as transgender people, are at risk of such sexual offenses in the present era. Furthermore, the Justice Varma Committee, which was formed after the resolution of the Delhi Gang Rape case, "Because the risk of sexual attack on men, as well as homosexual, transgender, and transsexual rape, exists, the laws must take this into account."

According to a recent survey performed by the Centre for Civil Society (CCS), around 18% of Indian adult men polled reported being compelled or forced to have sex. 16% identified a female perpetrator, whereas 2% claimed a male perpetrator. As a result, we must realize that in our modern culture, males, as well as women, are susceptible to sexual assault, harassment, and even penetrative actions through force. Section 377 of the IPC addresses attacks between men to some extent, but if the perpetrator is a woman, there are no such processes for a male victim to obtain justice in India.³⁰

The Indian Supreme Court stated in *Bodhisatwa v. Subhra Chakraborty*³¹ that "rape is a crime against basic human rights and is also a violation of the victim's most prized of the Fundamental Rights."

The Supreme Court of India ruled in *State of Himachal Pradesh vs. Shree Kant Shekari*³² that rape is a crime against not just the person of a woman, but also against society as a whole. It was also stressed that it violates Article 21 of the Indian Constitution, which guarantees everyone the right to life. As long as Article 21 is in effect, all members of society—men, women, and transgender people—have an equal right to protection against rape. As such, India's rape laws should be revised to include all members of society, regardless of gender

³⁰ Supra note 3

³¹ *Bodhisatwa v. Subhra Chakraborty*, 1996 AIR 922, 1996 SCC (1) 490, <https://indiankanoon.org/doc/642436/#:~:text=The%20facts%20set%20out%20in,the%20basis%20of%20his%20assurances>

³² *State of Himachal Pradesh vs. Shree Kant Shekari*, (2004) 8 SCC 153, <https://indiankanoon.org/doc/722945/#:~:text=The%20State%20of%20Himachal%20Pradesh,in%20short%20the%20IPC>).

roles.

In *Sakshi v. Union of India*³³, the Supreme Court of India set forth specific questions for the Law Commission of India to address on the definition of "Sexual Intercourse" as used in Section 375. The 172nd Law Commission responded to the matter and proposed revisions to section 375 that would broaden the offense's definition and make it gender-neutral. Sections 376, 376A to 376D feature a number of other adjustments that have been suggested. The committee has also proposed the elimination of section 377 of the IPC, the addition of a new section 376F dealing with unlawful sexual intercourse, and the strengthening of the penalties in section 509 of the IPC.

Our laws have a core constitutional duty to protect a circumstance in which a male or transgender person is forced to have sex and claims it is rape. Even if this is true, Indian penal laws and the judiciary have a guilty silence in addressing the challenges that the male and transgender communities experience in India.

Conclusion

Given the most recent developments in the area of gender justice following the rulings in *NALSA v. UOI*, *Navtej Jauhar v. Union of India*, and *Joseph Shine v. Union of India*, gender neutrality in rape laws is an urgent necessity. These rulings demonstrate the significance of gender equality in our nation and the necessity of the legal system taking into account these developments in society and its citizens. After all, the legislature's basic job is to address social developments and allow the law to advance with society.

The current administration has, however, made it clear where it stands on gender neutrality and how it views the phenomena of gender fluidity. The Transgender Persons (Protection of Rights) Act 2019 reflects this; rather than offering transgender people in India genuine legal protections, it requires an entire gender to obtain a certificate from the state proving their existence. Protecting the less powerful sexes is not the goal of gender justice. There are no sexes that are weaker than the other. The notion of empowering everyone's gender identity and allowing them the freedom to self-identify.

³³ *Sakshi v. Union of India*, (2004) 5 SCC 546, AIR 2000 SC 3479, <https://lexpeeps.in/sakshi-v-union-of-india/#:~:text=This%20case%20is%20a%20PIL,%2Fanal%2C%20finger%2Fvaginal>.

Introducing rape legislation based on gender neutrality doesn't attempt to totally desexualize rape; rather, it seeks to highlight the tendency of media and culture to promote stereotypical portrayals of genders and their different conducts. It must be known that its sole purpose is to broaden the scope of rape victims and give males, females, and transgender people the same legal protection.

