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# ANALYSIS ON GENDER- NEUTRAL RAPE LAWS: AN INDIAN PERSPECTIVE

AUTHORED BY - SREEKUTTY B.

## ABSTRACT

One of the most notable manifestations of inequality in the globe is gender inequality. Despite the fact that the IPC states that criminals cannot be discriminated, there are some anti-male provisions like section 375 that require a man to rape someone and a woman to be raped. Because of the female-centric conception of rape law and men's lack of awareness of the offence, criminality against men is constantly increasing and victims don't receive justice. The only option for male sex victims is the anti-sodomy statute, or section 377 of the IPC. However, if a woman is the offender, the victim is helpless to pursue retribution. Men need to be protected from such serious crimes just as much as women do. Thus, the necessity for gender-neutral rape legislation that provides relief for both men and women is crucial. According to the National Human Rights Commission, sexual abuse is one of the main causes of inmate suicide. Making rape legislation gender-neutral is a way to argue for the protection of men, transgender people, and homosexual people's rights to life, equality, and dignity. This paper tries to examine the importance and need for gender-neutral rape laws in India.

**KEYWORDS:** Rape-laws, Gender-neutrality, Hetero-normativity, Victimisation, Muscularity.

## INTRODUCTION

One of the most notable manifestations of inequality in the globe is gender inequality. Despite the fact that the IPC states that criminals cannot be discriminated, there are some anti-male provisions like section 375 that require a man to rape someone and a woman to be raped. Because of the female-centric conception of rape law and men's lack of awareness of the offence, criminality against men is constantly increasing and victims don't receive justice. The only option for male sex victims is the anti-sodomy statute, or section 377 of the IPC. However,

if a woman is the offender, the victim is helpless to pursue retribution. Men need to be protected from such serious crimes just as much as women do. Thus, the necessity for gender-neutral rape legislation that provides relief for both men and women is crucial. According to the National Human Rights Commission, sexual abuse is one of the main causes of inmate suicide. Making rape legislation gender-neutral is a way to argue for the protection of men, transgender people, and homosexual people's rights to life, equality, and dignity.

### **RESEARCH QUESTIONS**

1. Why does legal discourse only permit men to be rape perpetrators and not rape victims or survivors?
2. What are the current legal provisions available for the protection of male rape victims?
3. Whether there is a need to consider other Gender-community except women as victims of sexual assault or rape?
4. How is Hetero-normativity incorporated into Indian rape laws?
5. Why is there no law pertaining to male sexual assault in which they are regarded the perpetrators?

### **OBJECTIVES OF THE RESEARCH**

This study aims to evaluate whether India's rape law needs to be changed from a “gender-specific” to a “gender-neutral” one. The following are the objectives of the study:

- I. To examine the importance of gender-neutral rape laws.
- II. To analyse the hetero-normative character of Indian rape laws.
- III. To study the possibility of women as a perpetrators in sexual offences.
- IV. To look into the myths and stigmatation relating to the victims and perpetrators.

### **STATEMENT OF RESEARCH PROBLEM**

In this research project, the effectiveness of a gender-neutral rape statute is explicitly examined in the context of India. Gender neutrality is a notion that seeks to gender-neutralize legislation that is currently gender-specific. Gender neutrality refers to the elimination of distinctions between male and female rapists and sexual offenders. Only a man can be found guilty of rape, according to Sections 375 and 376 of the Indian Penal Code, 1860. It is commonly agreed that state laws, particularly those pertaining to sexual assault in its criminal justice system, should be governed by human rights as an essential principle and practise. Throughout history, different nations have noted the gender neutrality of rape legislation. The traditional view that

the victim is always a woman and the offender is always a man is reflected in the rape laws in India. Despite the Criminal Justice System's on going improvements, the concept of rape still solely recognises female victims as the victim. A progressive defence of the claim that victims of rape in India can include men, transgender people, as well as other non-confirmative fluid sexes has emerged after all these years.

### **SIGNIFICANCE OF RESEARCH**

India extended the definition of rape when it changed its rape laws in 2013, but it kept men out of the definition's concept of a victim. The LGBTQ and transgender groups, who are still unprotected by the legal system, are nevertheless rampant with sexual abuse. Rape is primarily an act performed on another person by a person or group of people to impose control, authority, and dominance over that person or group. Rape is not merely a sexually satisfying act for the offender. Anyone of any gender can commit rape.

It may be true that there are fewer males, Tran's people, and non-binary people than women, Tran's men, and non-binary people who commit crimes, but this does not imply that a group in society should not get legal protection from injustices. There are no statistics on sexual violence against the gay, lesbian, and bisexual community in India. The National Intimate Partner and Sexual Violence Assessment's 2010 survey of the US population, however, provides some insight into community victimisation. . According to the survey, rape, physical violence, or stalking by an individual have happened to 26% of homosexual men, 37% of bisexual men, 61% of bisexual women, and 45% of lesbian women. 48% of bisexual women reported having been raped when they were younger, compared to 28% of heterosexual women. Therefore, it is important to change current rape laws to be gender-neutral.

### **SCOPE AND LIMITATION OF RESEARCH**

This study looks at the necessity for gender-neutral rape legislation in India as well as the situations that currently exist when gender communities other than women are the victims of sexual assault. Women's involvement in sexual offences is also examined in the study. The study is limited to the Indian perspective.

### **RESEARCH METHODOLOGY**

In this study, the researchers used the doctrine-based research methodology since their findings were based on legal proposals, which they examined by looking at current statute provisions,

cases, and evaluating the logic in them. The researchers dug further into many legal principles and notions when creating this research work. These sources included cases, precedents, statutes, and more. Additionally, because the research contains a theoretical investigation of many of the issues involved, such as the judicial contributions etc., it was determined that the doctrinal technique was appropriate for the current study. In the doctrinal study the primary data include direct text and Indian Legislations. The secondary data is collected from various books, journals and other judicial decisions.

### **REVIEW OF LIERATURE**

This literature review is going to deal with the opinions and finding of various researchers who has expressed their views on Gender-neutral rape laws.

#### **BOOKS:**

1. Lesbian and bisexual survivors of woman-to-woman sexual violence, in **LORI B. GIRSHICK's** book are considered to be the most solitary crime victims. Society is unable to recognise such assaults because of complex concerns with sexual identity, institutionalised heterosexism, shame, and oppression<sup>1</sup>.
2. In his book, **MAN RAPE IS A FEMINIST ISSUE**, **CLAIRE COHEN** takes a Foucauldian approach to this topic in an effort to problematize beliefs and behaviours surrounding "male rape" and how they relate to feminism. It is conceivable for feminist formulations of "male rape" to assert that they function as a "regime of truth," but one must consider whether this is actually working against patriarchy<sup>2</sup>.

#### **ARTICLES:**

1. According to a **DEBORAH ZALESNE** essay titled "**WHEN MEN HARASS MEN: IS IT SEXUAL HARASSMENT?**", the problem of workplace sexual harassment has become more widely known and is no longer just committed against men and women but also against other sexual minorities. Most courts have come to the conclusion that the word "sex" in its narrow definition relates to biological sex, which is ascertained by an individual's genitalia. His research shows that the out-dated notion that sexual assault can only occur between men and women, which is held by many courts, is ignorant of

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<sup>1</sup> LORI B. GIRISHICK, "WOMAN TO WOMAN SEXUAL VIOLENCE", North-eastern University Press, 2002

<sup>2</sup> CLAIRE COHEN, MALE RAPE IS A FEMINIST ISSUE, Palgrave Mocomillian, 2014

the variety of ways that one person could indeed assert power over another, the existence of power structures within sexuality, and the complex relationships between sex, sexual orientation, and power. Neglecting the existence of a legal claim facilitates same-sex harassment against sexual minorities, which can be just as frequent, pervasive, threatening, harsh, embarrassing, and disruptive as opposite-sex harassment.<sup>3</sup>

2. In their study **THE SEXUAL HARRASSMENT OF MEN**, **JENNIFER L. BERDABL**, **VICKI J. MAGLEY**, and **CRAG R. WALDO** discovered that both men and women engage in sexual harassment of others, and that men label some behaviour as harassment while women do not. According to the findings, men feel much less intimidated by actions that women perceive as harassing than women do. They contend that sexual harassment frequently involves more power than sex.<sup>4</sup>
3. The author of **THE CASE OF GENDER NEUTRALITY IN RAPE LAWS**, **RISHABH CHOPRA**, claims that the definition of rape in India forbids anyone who does not identify as a woman from seeking redress in a court of law as a rape survivor. It is a long-standing patriarchal stereotype to think of women as the weaker sex, vulnerable to abuse and manipulation at the hands of men. This is also a result of the legal system's inability to recognise women as the perpetrators. India must have a law against gender equality in rape, as do more than 60 other nations<sup>5</sup>.
4. In an article titled **HERE'S WHY INDIA NEEDS GENDER NEUTRAL RAPE LAWS**, **SMITA SINGH** drew attention to the statement made by Justice Mustaque in a ruling by the Kerala High Court that “the sentence for rape under Section 376 IPC is not a gender-neutral provision”. Gender-neutral rape laws are in place in nations including the US, Philippines, Finland, Ireland, UK, Canada and Australia, and they recognise both men and women as offenders and survivors. Only women are unfairly designated as survivors under Indian law, and as a result, only women are granted protection at the expense of other genders in our society<sup>6</sup>.
5. In her paper **NEUTRALITY OF RAPE LAWS**, **ANUSHKA YADAV** expresses the idea that the Indian Constitution's equalitarianism is being undermined by the inequality

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<sup>3</sup> Deborah Zalesne, “When Men Harass Men Is it Sexual Harassment?”, Vol-7, TEMPLE POLITICAL AND CIVIL RIGHTS LAW REVIEW, 395, 395-416,(1998)

<sup>4</sup> Jennifer L. Berdahl, *The Sexual Harassment of Men?*, Volume 20, PSYCHOLOGY OF WOMEN QUARTERLY, 527, 527-547,(1996)

<sup>5</sup> Rishabh Chopra, *The Case for Gender Neutrality in Rape Laws*, THE CITIZENS IN , (24 Aug 2022, 10.35am), <https://www.thecitizen.in/life/the-case-for-gender-neutrality-in-rape-laws-333857?infinite-scroll=1>

<sup>6</sup> Simta Singh, *Here's Why India Need Gender Neutral Rape Laws*, SHE THE PEOPLE, (June 3, 2022), <https://www.shethepeople.tv/top-stories/opinion/gender-neutral-rape-laws/>

in the treatment of male and female rape. There is no particular clause addressing whether a male commits a rape of another male or a female commits one. Although there is a POCSO for male child sexual assault, adult male rape can only be sodomised under Section 377<sup>7</sup>.

6. **NIKUNJ KULSHRESTHA** in his article "**OUGHT THE RAPE/SEXUAL ASSAULT LAW IN INDIA BE GENDER-NEUTRAL?**" examine the Indian legal system's stance on sexual assault critically. The problems, beliefs, and misconceptions surrounding male rape are thoroughly examined. Additionally, it summarises the necessity for India to have legislation for gender-neutral sexual assault<sup>8</sup>.
7. In her article, **PRIYA NANDAN** made note of the persistent gender-role stereotypes that perpetuate the assumption that men, and the sense of masculinity they represent, are immune from becoming the victims of sexual violence or rape<sup>9</sup>.

## **GENDER-NEUTRALITY AND HETERO-NORMATIVE APPROACH**

*“These schemas constitute and are constituted by our current gender order—the patterns of power relations between men and women that shape norms for femininity and masculinity by defining what are gender-appropriate in arena such as romantic partner selection, occupational choice, and parental roles. The gender order is hierarchical, which means there is consistently a higher value on masculinity than on femininity”*

- Schilt, K. & Westbrook<sup>10</sup>

The words "gender," "sex," and "sexuality" are frequently used synonymously. Despite academic advancements in gender and sex conceptual differentiation theory, social policy and law rarely take this intricacy into account. Nowadays, there is a growing call for governments to adopt a more accepting stance on sexuality as a result of the public's increasingly outspoken opinions. Men and women should not be treated differently in society, the economy, or the law, according to gender neutrality.

<sup>7</sup> Anushka Yadav, *Gender Neutrality of Rape Laws*, Volume-4, Issue-4, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 2155, 2155-2160,(2021)

<sup>8</sup> Nikunj Kulshrestha, *Ought the Rape/sexual Assault law in India be Gender-neutral?*, SSRN ELECTRONIC JOURNAL,(19 Aug 2019),

[https://www.researchgate.net/publication/345141374\\_Ought\\_the\\_RapeSexual\\_Assault\\_Law\\_in\\_India\\_be\\_Gender-Neutral](https://www.researchgate.net/publication/345141374_Ought_the_RapeSexual_Assault_Law_in_India_be_Gender-Neutral)

<sup>9</sup> Priya Nandan, *Gender-Neutral Laws in India*, Volume 5, Issue 1 LJLMH, 2370, 2370-2341,(2022)

<sup>10</sup> Schilt, K., & Westbrook, "Gender Normals," *Transgender People, and the Social Maintenance of Heterosexuality. Gender and Society*, 440-464(2009)

When it comes to the concept and definition of rape, there is a significant doctrinal issue. Indian law forbids anyone other than a man from raping a woman. Men cannot be raped, according to the Indian Penal Code (IPC). This serves to highlight the socio-legal problem of male rape. Even if there have been instances of male rape, the doctrinal code of law appears to have been greatly impacted by societal perceptions of hetero-normativity and masculinity.<sup>11</sup> In addition to being founded on ideas of masculinity in relation to rape, India's heteronormative rape laws are also based on gender. Accordingly, men are the only ones who can commit rape and can only be the perpetrators; only women can be survivors or victims of rape. This is because it is assumed that rape is a sexually motivated act carried out only to satisfy the needs of the perpetrator.

According to Section 375 of the Indian Penal Code, "*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:—*

1. *Against her will.*
2. *Without her consent.*
3. *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.*
4. *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 law-fully married.*
5. *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 stupe-fying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*
6. *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*"<sup>12</sup>

In this definition, it is crucial to note that woman will only be the victim; a man must always be the offender. If men are sexually abused or raped, only the Indian Penal Code 377, "carnal intercourse against the order of nature," may be used as legal justification. Section 377 defines

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<sup>11</sup> Stokes, *Indian law should recognise that men can be raped too*, CROLL IN, (Nov. 16, 2022, 6.47 PM), <https://scroll.in/article/676510/indias-law-should-recognise%20that-men-can-be-raped-too>

<sup>12</sup> Indian Penal Code, 1860, Section 375

Unnatural offences as-

*“Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”.*<sup>13</sup>

Homosexuality and other "unnatural offences" are made illegal in this section of the IPC, which supports hetero-normativity. So, the law does not take gender into account. In addition to discriminating against male rape survivors, it also supports a legal culture that is heteronormative. This socio-legal issue needs to be understood in the context of the hegemonic social forces that the Indian Penal Code and theoretical law in general underwent during their development.

Rape has always been seen as a crime that mostly affects women, especially in India. Only men are considered the perpetrators of rape according to Indian law, as specified under section 375. Even sexual offences like voyeurism, stalking, and sexual harassment only involve men as the perpetrators. The sodomy law under section 377 of the IPC is the lone exception to the laws that are sexist against women. Even if it was done voluntarily, the clause made actions of penetration against the natural order illegal. The police utilised this offence as a tool to harass sexual minorities, which significantly hampered India's efforts to recognise the rights of homosexuals.<sup>14</sup> However, the Honourable Supreme Court decriminalised<sup>15</sup> the clause in 2018 to the extent as it applied to consenting activities.

Male rape victims have been mainly left out of this field of research, despite the fact that feminist explanations of rape are solid and thorough.<sup>16</sup> The Indian Penal Code, with a concentration on IPC 377<sup>17</sup> and IPC 375<sup>18</sup>, reinforces hetero-normativity.

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<sup>13</sup> Indian Penal Code, 1860, Section 377

<sup>14</sup> Nikunj Kulshrestha, *Ought the Rape/sexual Assault law in India be Gender-neutral?*, SSRN ELECTRONIC JOURNAL,(19 Aug 2019), [https://www.researchgate.net/publication/345141374\\_Ought\\_the\\_RapeSexual\\_Assault\\_Law\\_in\\_India\\_be\\_Gender-Neutral](https://www.researchgate.net/publication/345141374_Ought_the_RapeSexual_Assault_Law_in_India_be_Gender-Neutral)

<sup>15</sup> Navtej Singh Johar v Union of India, (2018) 10 SCC 1

<sup>16</sup> Javaid, A. (2016). *Feminism, masculinity and male rape*, Journal of Gender studies, 25(3), 283-293

<sup>17</sup> Indian Penal Code, 1860, Section 377

<sup>18</sup> Indian Penal Code, 1860, Section 375

## **MYTH AND STIGMA SURROUNDING RAPE**

In order to keep hegemony over society, hetero-normativity is encouraged. A stigmatisation of extra-vaginal sex that goes beyond penis penetrating a vagina is also connected to the hegemonic rhetoric of promoting heteronormative interactions between men and women. As a result, there is a strong homophobia associated with it. Hetero-normativity is a concern since it disapproves of intersex relationships.

In our society, we are continually reaffirming hetero-normativity, for instance, by reaffirming specific gender relations. The stereotyped portrayal of a traditional family that is founded on a relationship between a man and a woman, with marriage being the primary institution, is a prime example.

Rape myths are perhaps method through which sexual assault has been supported and excused throughout history and in the present era. The amount of literature on rape myths involving male victims, however, has been severely lacking. Sexual assault can happen to people of either sex, yet the majority of adult sexual offences are committed by men against women. Rape, which has been characterised as "prejudicial, stereotypical or erroneous attitudes about rape, rape victims, and offenders," is substantially to blame for the marginalisation and invisibility of male sexual assault.

Myths about rape that pertain to male victims include:

- i. Men cannot be raped
- ii. "Real" males are capable of defending themselves from rape;
- iii. All rape victims and/or perpetrators are homosexual males;
- iv. Rape does not affect men as much (or at all) as it does women;
- v. A man cannot be sexually harassed by a woman;
- vi. Male rape only occurs in jails and prisons;
- vii. Due to their immorality and deviance, bisexual and homosexual individuals deserve to be sexually abused;
- viii. An assault victim must have desired it if he physically reacts to it.<sup>19</sup>

Under a patriarchal social structure, masculine predominance and heterosexism are prized values, but men's sexual victimisation experiences are at odds with these principles.

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<sup>19</sup> Jessica A Turchik, *Myths about Male Rape: A Literature Review*, Vol. 13, PSYCHOLOGY OF MEN AND MASCULINITY, 211 211-226( 2012)

### **MASCULARITY AND MYTH**

Our understanding of men and society at large depends heavily on masculinity and its conceptions. Male's fear of femininity is rooted in "toxic masculinity," which promotes the idea that men are superior to women and femininity, and that men are more sexually aggressive as a result of this fear. Therefore, masculinity is linked to a strong understanding of what it means to be "a man" through role models. Due to social pressure to conform and their fear of "being feminine," men are reinforced in certain behaviors.<sup>20</sup>

According to research, there are widespread misconceptions and stigmas related to male rape. "Real men can protect themselves," for instance. According to this myth about masculinity, a guy is not considered to be a "true man" if he cannot defend himself against sexual assault. Any male rape victim must worry about social repercussions, as well as "victim-blaming" and "victim-shaming", which is problematic for him. The fear of jeopardising their representational masculinity, which society expects from a "real man", may prevent male survivors of "male rape" from reporting their abuse and force them to suffer in silence as a result of toxic masculinity ideals.<sup>21</sup>

The idea of masculinity is always portrayed as being sexually active and aggressive, rather than as "victims" in the traditional sense, as this goes against the idea of masculinity and the fear of feminine. As a result, "men rape victims" are rendered invisible in the socio-legal discourse due to the social construction of masculinity.

### **GENDER-NEUTRALITY IN RAPE LAW**

In **Sudesh Jhaku v. KC Jhaku**<sup>22</sup>, gender neutrality in Indian rape legislation was addressed for the first time. In this instance, it was determined that male victims of sexual assault should have the same legal protections as female victims. Making rape laws impartial was advised in the 172nd Law Commission's Report<sup>23</sup>.

India has seen a sharp increase in requests to change our long-standing rules and regulations in order to reflect the views of the public today and to address the needs of the modern world. As

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<sup>20</sup> Smith, R. M., Parrott, D. J., Swartout, K. M., & Tharp, A. T. *Deconstructing hegemonic masculinity: Psychology of Men & Masculinity*, 160,(2015)

<sup>21</sup> Stemple L. & Meyer I. H, *The sexual victimization of men in America: New data challenge old assumptions*. American journal of public health, (2014)

<sup>22</sup> Sudesh Jhaku v KC Jhaku, 62 (1996) DLT 563

<sup>23</sup> 172nd Law Commission's report, March 25, 2000

a result, the government undertook some notable reforms in our socio-legal system, including the decriminalisation of adultery, the approval of live-in relationships, the acceptance of homosexuality, the inclusion of the Right to Privacy as a Fundamental Right. The principles of "Equality" cherished in the Basic Structure of the Constitution of India are not strictly upheld, it turns out if we look at the practical realities of identifying the concept of "Gender Neutrality in India's rape laws, as laid down under sections 375-376<sup>24</sup> of the Indian Penal Code, 1860. It is debatable whether gender neutrality should be incorporated into any comprehensive policy to cover rapes committed by men against men, women against women, or transgender people. This is essential if the country is to develop into a mature democracy with fairness, integrity, and objectivity as guiding principles.<sup>25</sup>

### **MALE-ON-MALE RAPE**

In spite of the historic ruling in **Navtej Johar & Ors. v. Union of India**,<sup>26</sup> decriminalising Section 377 of the Indian Penal Code, there is still no easily accessible legal remedy to address adult male to male rapes in India. The "Protection of Children from Sexual Offenses (POSCO) Act"<sup>27</sup> of 2012 provides protection for male child rape victims, however adult male rape victims are not provided with any legal services or support because such crimes are outside the purview of the Indian Penal Code's court system. Male-male rapes and female-female rapes in prisons, according to a number of studies, are common occurrences, and the vast majority of such crimes go undetected.<sup>28</sup>

### **FEMALE-ON-FEMALE RAPE**

The opinion of the High Court in **State Govt. v. Sheodayal**<sup>29</sup> is that- "modesty of a woman can be outraged by another woman under the purview of Section 354 of IPC". The Supreme Court addressed the issue of whether or not a woman can engage in gang rape in **Priya Patel v. State of M.P**<sup>30</sup>. As per Section 376(2) (g)<sup>31</sup>, "whoever commits gang rape can be punished..." Each member of the group is viewed as having committed gang rape when a woman is raped

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<sup>24</sup> Indian Penal Code, 1860, Section 375-376

<sup>25</sup> Priya Nandan, *Gender -neutral Laws In India*, Vol. 5, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 2373, 2370-2381(2022)

<sup>26</sup> Navtej Singh Johar v Union of India (2018) 10 SCC 1

<sup>27</sup> Protection of Children from Sexual Offenses Act, 2012 ,(POSCO)

<sup>28</sup> Priya Nandan, *Gender -neutral Laws In India*, Vol. 5, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 2375, 2370-2381(2022)

<sup>29</sup> State Govt. v. Sheodayal, 1956 CrLJ 83 M.P

<sup>30</sup> Priya Patel v. State of M.P [(2006) 6 SCC 263]

<sup>31</sup> Indian Penal Code, 1860, Section 376(2)(g)

by one or even more members while they are working toward a common goal. The act of penetration might thus be carried out by the group as a whole without the need for each individual member. The court did rule, however, that- "it is impossible for a woman to rape another woman since it is inconceivable for a woman to have the intention to do so". Indian intellectuals and activists have mostly been silent on this element of gender neutrality while the debate over whether a woman can rape a man has been hotly debated in the public realm.<sup>32</sup>

### **FEMALE-ON-MALE RAPE**

Comparing a female committing a rape on male to other types of sexual assault, there is a glaring lack of study on this crime. To determine the statistical prevalence of such crimes in India, we lack any valid historical context or official study data. Predictably, a male rape victim who attempts to submit a legal FIR charging a woman of rape is likely to face ridicule from the police as well as possible extreme social rejection and mental anguish. Regardless of caste, colour, creed, ethnicity, or sex, a victim of a crime is nonetheless a victim. Contrarily, the shouts and protests of male rape victims are only unspoken thoughts that are never taken seriously. A culture where "pseudo-feminism is at its pinnacle" is finally created as a result of such impermeable indifference between the sexes.<sup>33</sup>

### **TRANSGENDER RAPE**

Gender-neutrality in rape laws advocates for the inclusion of members of the transgender community as well as the two genders that are most widely recognised in society. A shocking contravention of the Supreme Court's landmark 2014 decision in the case of **National Legal Service Authority v. Union of India**<sup>34</sup>, in which the SC took due cognizance of the "rights and remedies of the transgender community", is the fact that India currently has no specific laws pertaining to rapes of trans people. This blatant disregard is a violation of the SC's landmark decision. To "eradicate ostracism and the predispositions towards transgender and place them on an equal platform in the eyes of the law", the Transgender Persons (Protection of Rights) Act<sup>35</sup>, 2019 was put into effect. However, numerous important legal provisions regarding sexual offences against transgender people were left out of the Act, and those stubborn gaps have still not been filled. Furthermore, rather than eradicating discriminatory

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<sup>32</sup> Anushka Yadav, *Gender Neutrality of Rape Laws*, Vol. 4, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 2159, 2155-2160, (2021)

<sup>33</sup> Priya Nandan, *Gender -neutral Laws In India*, Vol. 5, IJLMH, 2376, 2370-2381(2022)

<sup>34</sup> NLSA v. Union of India [AIR 2014 SC 1863]

<sup>35</sup> Transgender Persons (Protection of Rights) Act, December 2019

attitudes, the 2019 Act contains provisions that strangely have the opposite effect.<sup>36</sup>

## **VICTIMISATION**

In India, there is always some form of gender-based violence. Due to the significant impact that sexual assault has on Indian women's daily lives, this has a significant negative impact on their livelihoods. In both the public and private spheres, gender-based violence against women is a reality. In the patriarchal culture, rape is just one example of the numerous forms of gender-based violence that are practised. India has earned the unflattering title "the rape capital of the world."<sup>37</sup> As a result, gender-based violence is frequently seen as being a threat to primarily the physical and mental well-being of women, while men are rarely considered to be at risk. In contrast to men, who are only seen as perpetrators, women and girls are portrayed as "victims" or "survivors" more frequently. Men are also harmed by rape in India, thus this need to be taken seriously.<sup>38</sup>

India, which has a far more conventional view of gender issues than other nations, does not accept victims who identify as the "dominant" sex. Male was overlooked as our nation's rape laws were being written. Male victims of rape are not included in the definition of rape in Section 375 of the Indian Penal Code. The single part of the Indian Penal Code, Section 377, makes any non-consensual carnal actions, including male on male rape, illegal. The Indian government decided to change the definition of rape in 2002 to make it gender-neutral, however this decision drew criticism for potentially harming the rights of female rape survivors and victims.<sup>39</sup>

### **IMPACT OF FEMINISM**

The main obstacle to the introduction of a gender-neutral rape law is seen as the feminist resistance. In general, the laws are closely tied to heteronormative presumptions about the relationships between men and women. Men who rape men or boys can only be punished under the sodomy-related Indian Penal Code 377, which criminalises "unnatural offences," like homosexuality. The social conceptions of masculinity do not "enable" men to be rape victims or survivors.

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<sup>36</sup> Priya Nandan, Gender -neutral Laws In India, Vol. 5, IJLMH, 2377, 2370-2381(2022)

<sup>37</sup> Kohn, S., *Is India the Rape Capital of the World* (2013)

<sup>38</sup> Sharma, B. R., & Gupta, M, *Gender based violence in India: A never-ending phenomenon*. Journal of International Women's Studies, 114-123(2013)

<sup>39</sup> Akhila C, "Why Do We Assume That Men Aren't Raped When The Reality Is Far From It?", YKA (Nov 17, 2022, 1.44 PM) <https://www.youthkiawaaz.com/2016/06/male-survivors-of-sexual-violence/>

The idea that a rape victim is always a woman and the perpetrator is always a man is the foundation of Indian law. Gender neutrality is a notion that seeks to do away with distinctions between the sexes in the drafting and application of laws. This idea contends that everyone should receive the same protection from the law without gender-based discrimination. It suggests that laws that are gender-specific are uniform. One such law is a rape law. According to sections 375 and 376 of the Indian Penal Code, 1860, only a man can be found guilty of rape, and only a woman can be the victim. Gender neutrality is not present in this law, which is gender-specific.<sup>40</sup>

The stereotype associated with the word "victim" assumes that a victim is a woman since she is the most defenceless member of society. The same idea is the foundation of the Indian rape laws, which means that they provide no safeguards to the other rape victims. This results from the presumption that rape is solely a sexual act performed to gratify the sexual desires of the perpetrator. But with increased understanding, it is clear that sexual assault nowadays is not merely an act of passion but also a sign of domination over another person's caste, religion, gender, community, and desire to use one's position of authority over them to make them feel inferior. The sufferer should not only be a "female" if the statements above are to be believed.<sup>41</sup> When it comes to a rape offence, historically speaking, both India and the rest of the world have viewed women as the victims and men as the offenders. The rape of a man, however, has long been a contentious matter, and because we still live in a patriarchal society, it is difficult for both society and the legal system to recognise it. This is true despite the fact that war crimes involving the sodomization of males by males have been recorded throughout history. The rise of female empowerment and the introduction of feminism have also made it apparent that an increasing number of women have indeed been found guilty of infringing on men's sexual autonomy. In addition, there is growing worry about changing the gendered rule on rape into a gender-neutral one in light of the recognition of homosexuality as a normal sexual preference. There is no doubting that the majority of rape victims are female, yet statistics on crime show that rape offenses against men are also on the rise.<sup>42</sup>

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<sup>40</sup> Priya Nandan, *Gender -neutral Laws In India*, Vol. 5, IJLMH, 2376, 2370-2381(2022)

<sup>41</sup> Anushka Yadav, *Gender Neutrality of Rape Laws*, Vol. 4, IJLMH, 2159, 2155-2160, (2021)

<sup>42</sup> Nikunj Kulshrestha, *Ought the Rape/sexual Assault law in India be Gender-neutral?*, SSRN ELECTRONIC JOURNAL,(19 Aug 2019),

[https://www.researchgate.net/publication/345141374\\_Ought\\_the\\_RapeSexual\\_Assault\\_Law\\_in\\_India\\_be\\_Gender-Neutral](https://www.researchgate.net/publication/345141374_Ought_the_RapeSexual_Assault_Law_in_India_be_Gender-Neutral)

## **CONCLUSIONS, RECOMMENDATIONS AND SUGGESTIONS**

### **CONCLUSION**

In India, neither rape nor sexual assault is recognised as crimes that can be perpetrated against men. Only a guy may commit these crimes against a woman since the definition of each is so specific. The Justice Verma Committee's<sup>43</sup> recommendations on this matter have been rejected by the government. In its findings, the Committee had unequivocally concluded that "if the human right of freedom means anything, then India cannot deny its citizens the right to be different". As a result, the fundamental principles of equality guarantee that everyone has the freedom to express their sexual orientation.

The Committee agreed that gays and transgender people should be included in laws protecting them from crimes like sexual harassment and assault. . The Committee has openly acknowledged the prevalence of male, gay, transgender, and transsexual assault as well as the need for changes in this area. The Universal Declaration of Human Rights<sup>44</sup>, adopted in 1948, the International Covenant on Civil and Political Rights<sup>45</sup>, signed in 1966, and the International Covenant on Economic, Social, and Cultural Rights<sup>46</sup>, signed in 1966, all reaffirm the inherent right of every person to equality and human dignity. India is a signatory to many international covenants on human rights. However, India has deliberately opted to ignore its duties under these.

A male cannot be sexually assaulted by a female since "man" is thought to be stronger than a woman. The incidence of rape and sexual assault incidents against men has been continuously rising because the definition of rape in India is restricted to the entry of the penis or an object into the vagina. Men have been victims of these crimes on several occasions, but nothing has been done because there is no legal protection.

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<sup>43</sup> Justice Verma Committee, Dec 23, 2012

<sup>44</sup> Universal Declaration of Human Rights, 1948

<sup>45</sup> International Covenant on Civil and Political Rights, 1966

<sup>46</sup> International Covenant on Economic, Social, and Cultural Rights, 1976

## **RECOMMENTATIONS AND SUGGESTIONS**

Increased victimisation of rape and sexual assault victims is the goal of gender neutral rape laws. It strives to acknowledge and normalise male and other gender rape and sexual assault and to offer equal legal protection to all people, regardless of their gender. The gender-neutral laws have been established and adopted in about 77 nations, including the USA, UK, Canada, Philippines, Finland, Ireland, and Australia. "To provide a safe environment, at all times, for all citizens" is the state's primary duty. The state's laws ought to be written in a way that reflects its responsibility to its inhabitants. In India, rape is defined as "a man is said to commit 'rape' if he..." in Section 375 of the Indian Penal Code. India upholds the conventional view that men are the perpetrators of rape and does not recognise gender neutrality in rape laws.

The Law Commission of India has proposed that the rape law be gender neutral in its 172nd report<sup>47</sup>. There is a claim that the fundamental rights entrenched in our constitution, such as equality before the law and equal protection of the rights, must also be implemented in this situation. The Report advocated for extending the definition of rape to cover situations in which both men and women could be sexual assault perpetrators and victims.

A committee<sup>48</sup> was formed on December 24, 2012, and Justice (Retired) J.S. Verma was elected as its chairman. The committee recommended that a gender-neutral rape law be adopted. Men who are raped would have benefited from the crime being gender-neutral, and Section 377, a highly contentious law that has no place in a democracy in the twenty-first century, would have been eliminated.

Justice A Muhamed Mustaque, Kerala High Court while adjudicating upon a matrimonial dispute raised by a divorced couple over the custody of their child observed<sup>49</sup> that-

*"Section 376 is not a gender-neutral provision. If a woman tricks a man under false promise of marriage, she can't be prosecuted. But a man can be prosecuted for the same offence. What kind of law is this? It should be gender-neutral".*

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<sup>47</sup> 172<sup>nd</sup> Law Commission Report, March 25, 2000

<sup>48</sup> Justice Verma Committee, Dec 23, 2012

<sup>49</sup> Akshara Nath, *INDIA TODAY*, Jun 2, 2022, <https://www.indiatoday.in/law/story/kerala-high-court-rape-gender-neutral-offence-remark-1957494-2022-06-02>

*Part III of the Indian Constitution<sup>50</sup>, which guarantees equality before the law and equal protection under the law<sup>51</sup>, also has a section that enshrines fundamental rights and forbids sex discrimination<sup>52</sup>. Despite the fact that the state government is permitted by article 15(3) of the constitution to make measures for the advancement of mankind, the government is nonetheless free to pass legislation to safeguard the interests of other groups. Men and members of the transgender community are more rarely the victims of rape, but it does not mean that they should not have the same rights as everyone else.*

*The conclusions and suggestions can be summarised as:*

- The terms "victim" and "perpetrator" should not be gender-specific in order to create gender-neutral laws in India.
- When enacting legislation to safeguard the community's most vulnerable members, the situation of other genders should not be disregarded.
- While protecting the weaker groups, laws should also protect the other groups that are just as vulnerable to harm and criminal activity.
- This requires that laws be reasonable and not harm or ignore any groups.

Modern binary conceptions of man and woman are still very much alive and well, even when they are dressed up in the guise of gender-sensitivity. Under the guise of gender-neutrality, sex and gender are mixed up in a way that minimises the severity of female victimisation. The Indian Penal Code, 1860 contains many such misunderstandings and needs to be carefully reviewed.

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<sup>50</sup> Indian Constitution, 1950

<sup>51</sup> INDIAN CONSTITUTION, Article 14

<sup>52</sup> INDIAN CONSTITUTION, Article 15

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