
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

GENDER NEUTRAL RAPE LAWS IN INDIA- Anamay Arora¹**Abstract**

India is not an exception to the horrible crime of rape that has afflicted communities around the world. The need for a more inclusive legislative framework has been brought to light by the numerous incidences of sexual assault against women and members of the LGBTQ+ community that have occurred in India in recent years. This problem has been raised, and gender-neutral rape laws have been suggested as a solution. This essay looks at India's current rape laws and the necessity for gender-neutral ones. In addition, the article examines the ramifications of such regulations and possible obstacles to their implementation.

Introduction

The word Gender Neutral means that there is no discrimination between the genders. It is free from the explicit or the implicit reference to any gender or sex. The basic example of gender neutrality can be the word "People" instead of using man/woman. The word People include all the genders in it and does not discriminates among different genders.As the name suggests, Gender Neutral Rape laws mean that the law considers the same Rape laws for all genders without discriminating amongst them. It implies that there should not be any difference in the codification and execution of different laws for different genders. The law should be the same for everyone. But one such law which not gender-neutral is the Rape Laws in India.In India according to Section 375, a male can only be the perpetrator and a female can be the victim of rape. This law lacks the concept of Gender Neutrality.

Gender Neutral Rape Laws mean to eliminate the difference between a man and a woman as a perpetrator. Although our Indian Constitution is considered to be the lengthiest in the whole world and has always made clear that there shall not be any kind of discrimination on the basis

¹ Student at JEMTEC School of Law (Affiliated to GGSIPU)

of caste, religion, sex, or place of birth, but still is unable to provide protection to many people. There is a common notion in society about men being too strong and harsh that it prevents them to come out and tell their stories to society. And even though if a man tries to come out and tells his story, society would not believe him and instead make fun of him for saying this. A man's consent is considered with his erection which is a basic sexual stimuli but it is considered to be his consent by many.

The Patriarchal Society

A Patriarchal Society is a society which is dominated and controlled by men. India was a patriarchal society as most of the skilled work was done by the men and women were usually the homemakers. But due to the course of time the thinking of the society changed and now women work alongside many men. The idea of an ideal man in the society is to be a strong and to be manly enough and not to cry in public and to hide his emotions and act strong all the time. And this also the patriarchal society which prevents them from coming out and tell their stories. Most of the crime against men go unreported and unnoticed in society. The punishment for a crime should be based on how heinous the crime is and not on the basis of gender.

In recent times when the feminist movement has emerged, men have been suppressed even more and are not able to come out. If a man shows even a bit of a feminine side, he is considered to be feminine by society. Even radicals and pseudo-feminists claim that enacting gender-neutral legislation would be harmful to women's interests. A study done in America in 1989 showed that the reaction of men in cases of sexual assault is similar to women. But the stigma that men are strong and brave and should hide their emotions have led to many of the cases being unreported and making men oppressed. Gender Neutrality was first dealt with in the case of *Sudesh Jhaku v. KC Jhaku* where the court said that sexually assaulted men should also be treated equally as women. As part of the process of shaping the minds of the people, the media of India has also played a significant role in doing so. The media does not portray any man as a victim of sexual assault and paints an unrealistic picture of a man. Even Bollywood has been playing a major role in influencing the mindset of the people and there still exists an iconic dialogue saying that the real man feels no pain. The issue of a man's molestation has always been used as a comedy in the movies and is always made fun of. Therefore, the mindset of society is such that men cannot be raped and be sexually assaulted by women. In a recent study,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

it was found that out of 222 Indian men surveyed, 16.1% of them have been coerced into having sex. And according to a survey done by the Indian government specifically for child abuse, it turned out that nearly 57.3% of child abuse victims were boys and 42.7% of them were girls and abuse included rape or sodomy.

Recent Developments

Many suggestions were given in the 172 Law Commission report, to widen the scope of gender-neutral laws in India. This was the first time when the rape laws were discussed in a very futuristic way and helped in broadening the scope of gender-neutral laws in India. This report also suggested removing Section 377 of the IPC. The Criminal Law Amendment Ordinance, 2013 after the recommendations made by the Justice Verma Committee, after the Delhi Gang Rape Incident, the first time in the history of India the rape laws were made gender neutral. However, the changes were on a temporary basis and it was enforced for only 58 days.

In the year 2013 Arvind Narrain gave three dimensions of gender neutrality:

1. Neutrality with respect to the victim.
2. Neutrality with respect to the perpetrator.
3. Neutrality in custodial, communal, war and conflict situations.

These dimensions can help society to understand the concept of gender neutrality. The word “victim” shall not only include women in cases of sexual assaults. Mr. K.T.S Tulsi, a member of the Rajya Sabha introduced a Private bill names “The Criminal(Amendment) Law Bill: on 12th July, 2019.

Case Laws Relating to Gender Neutral Laws

1. Independent Thought v. Union of India (2017):

The Supreme Court of India in this case, upheld the constitutionality of Section 375 of the Indian Penal Code which defines rape, as amended by the Criminal Law (Amendment) Act, 2013. The Court observed that the amendments to the law had made it gender-neutral, and that rape can be committed against anyone, regardless of gender.

2. Sakshi v. Union of India (2004):

In this case, the Supreme Court of India recognized the need for gender-neutral laws to protect men from rape. The court observed that men were not recognized under this section

and this violated their fundamental rights The Court directed the government to amend the IPC to include provisions for the rape of males and other genders as well.

3. State of Maharashtra v. Madhukar Narayan Mardikar (1991):

The Bombay High Court held that rape is a crime against the person, and not just against women. The Court observed that rape could be committed against men as well and that it was the duty of the law to protect them.

4. State of Punjab v. Gurmit Singh (1996):

The Supreme Court of India ruled in this case that a rape victim's testimony should be assessed using the same standards as any other witness. The victim's testimony should be given due consideration, the court stated, and it was not always necessary to have further evidence to support the victim's statement.

5. State of Karnataka v. Krishnappa (2000):

In this instance, the Indian Supreme Court determined that rape was committed without the need for medical proof. The court stated that the victim's testimony was adequate to prove the accused's guilt and that the victim's evidence should be relied upon if it was reliable and credible.

The LGBTQ+ Community

The LGBTQ+ community got its recognition on 6th September 2018 when the Supreme Court unanimously held that Section 377 IPC is unconstitutional as it infringed the Fundamental Rights of autonomy, intimacy and identity and this lead to legalization of homosexuality in India.

Although the LGBTQ+ community has got its recognition, there are no such laws against sexual harassment for them. Abusing a transgender attracts 6 months imprisonment which can be extended up to 2 years regardless how heinous the crime is. Whereas in the case of woman the punishment can be of 10 years of imprisonment and sometimes even death penalty is given. In 2015, Sangama prepared a report for Kerala's Government. This report included surveys of the transgender people and how many of them were sexually harassed. According to this report, 60% of transgender persons were surveyed and had experienced sexual assault or harassment.

In 2015, National Aids Control Organization (NACO), surveyed 5000 transgenders and every 5 the person of them had experienced sexual violence just that year. Transgenders are often rattled

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

in women washrooms or in the ladies' compartment in metros or trains. When transgenders approach the police for help, they are oftenly harassed there as well and sometimes are even raped in jails. Parents of those who don't support their children force them to have sex with the person of the opposite gender and they term it is "Corrective Rape" which means that this will make their children normal.

Conclusion

Rape is a trespass to anyone's bodily autonomy. Forcefully entering someone's body without their consent is categorized as rape. In recent times when almost 77 countries including the UK, USA, and Australia have adopted the gender-Neutral laws, India is still very far behind in adopting these laws even though India wishes to be a super country soon. Indian law has always considered the woman as the victim and the man as the perpetrator in cases of rape. The definition of the term rape only sticks to the penetration of a penis into the vagina. The stigma prevailing in society about men being stronger than women has prevented men from coming out and telling their stories. The portrayal of men being evil in the cases of rape and sexual harassment has made society form an opinion against men. POCSO Act, where in the definition, a child has been defined as "any person below the age of 18 years" has no such specific gender mentioned in this act. The police and the legal system have always been a part of this inequality and bias against men.

The present laws should be looked upon and should be amended as per the changing environment. Equal protection shall be given to all gender including the LGBTQ+ community. Everyone has the right to be heard and get justice. They should be given equal legal protection and the chance to be heard like everyone else. Society should stop idealizing the idea of an "ideal and a real man" and help out the victims.