
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

RE-CONCEPTUALIZING RAPE LAWS IN INDIA FROM A GENDER-NEUTRAL PERSPECTIVE

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ABSTRACT

The word 'Rape' encompasses the idea of a violation of one's physical integrity. The legislative definition of rape implies that a male commits the offense against a woman, but has anybody ever considered the inverse to be true? Some opponents of gender-neutral rape legislation are uncomfortable with the growing public awareness of and reaction to male sexual victimization, which is a basic problem in any conversation about this topic. Although there have been significant improvements to India's rape laws in recent decades, they are still very sexist and patriarchal. Considering that people of any gender may be victims, survivors, or perpetrators of rape, several nations are passing legislation that does not discriminate based on gender. Even now, the definition in India adheres to the long-held belief that this crime can only be perpetrated by males and that women can only be victims of it. The denial of justice, liberty, right to life, and equality to some groups of society may be facilitated by this harmful stereotype. A more progressive line of reasoning has emerged after all these years, arguing that rape may affect people of any gender, including males, transgender people, and others who do not identify with the binary. This essay will address the specific lack of understanding surrounding the acknowledgment of gender neutrality in rape laws under India's penal code.

KEYWORDS: *integrity, victimization, stereotypes, patriarchy, gender-neutral, equality, justice, offence.*

INTRODUCTION-

“A principle of criminal law is, surely, that all persons should be protected equally from harm of like degree.... The case for treating crimes of like heinousness similarly appears

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to be stronger than that calling for a distinction to made between penetration of the female bodyand penetration of the male body whatever the sex of the actor”- Jocelyne Scutt²

In India, like in the rest of the globe, rape ranks high among the most visible and horrific forms of criminal violence. It has long been believed that rape is only committed by men against women. However, as time has progressed, it has been clear that members of the transgender community, as well as the gay and bisexual communities, are just as vulnerable to this crime. Rape is a universal crime that does not discriminate based on age, gender, or sexual orientation. Although there are many similar situations, the vast majority of them never make it into the public eye; when they do, it calls into doubt the victim's credibility. Rapes perpetrated against non-females are underreported and thus little understood; yet, it is critical that the public be apprised of this crime and that enough law and order be maintained in order to put an end to this abhorrent practice. It is important to recognize that rape may occur anywhere, including but not limited to schools, offices, jails, businesses, coaches, and can include victims and perpetrators of any gender. The gravity of the problem can only be grasped if one abandons the idea that sexual offenses may only ever be committed against women.

HISTORY OF RAPE LAW: -

Any criminal law ordinance passed is intending to reduce the breakthrough of the particular crime, instil fear and create an overall peaceful society. The criminal ordinance of 2013 and passing of the anti-rape laws that brought in stricter punishments and increased safety for women although the present rape laws do not seek to protect and ensure safety from assault, harassment or rape.

“When India amended the laws on rape in 2013, it expanded the definition of rape but continued to exclude any other gender except female as victims. Yet, sexual violence is all too common within the LGBTQ and transgender communities, who remain outside the ambit of justice”.

These laws lack the perspective of gender neutrality and the fundamentalright to be protected and ideal for equality. The term rape was used for the first time in 1860 inthe Indian Penal Code in section 375 to section 375(E)which referred to this as 'sexualoffences'. The same

²Jocelyne Scutt; Scutt, supra note 12, at 616-17: writing about rape law reform in Michigan; (accessed on 01.07.2022 06:50AM)<https://mail.google.com/mail/u/0?ui=2&ik=671eb3226c&attid=0.1&permmsgid=msg-a:r-6238281961541854557&th=181c01625526a3d9&view=att&disp=safe&realattid=181c016014e321b6d251>

failed to take in account of other sexual activities such as oral sexualoffence and rape against a male, and thus created an idea of the doubt to the minds of thevictims, as they feared prosecution under the section 377 of the Indian Penal Code. All in all,the rape law took very lenient punishment and thus with the case of **Tukuram V. Union of India**³, this archaic law saw a reform and modification. As there were no visible signs andmarks of injury, and the accused claimed that the girl Mathura was sexually active and thus itamounted to consent⁴.The breakthrough around the country aimed at announcing thatsubmission of women under authority does not amount to consent. The change was seen insection 114 (A) of 1983 of the Indian Evidence Act, until when rape by public servants wasnot accounted for, that is custodial rape. Although the **Protection of Children from SexualOffences Act (POCSO)** implemented strict regulations for punishments for any sexualoffence such as assault, harassment and pornography done against a child below the age of 16.It is in the interest of safeguarding the children and the judicial process. Although the POCSOAct⁵ protects both boys and girls under the age of 16 years, and with the Criminal AmendmentAct, 2018 which prescribes death penalty as a punishment for rape on children below the ageof 12. With all these prescribed remedies for a crime against sexual assault and offences againstwomen and children, a sense of equality is seen to be missing on the grounds of equality asmentioned in the Article 14 of the Indian Constitution⁶. All laws need to be gender-neutraland thus all those sexual offences although with stronger intentions to protect women, need to know the proximity of sexual offences against men and other genders⁷.

THE MYTH OF RAPE BEING A GENDER BASED VIOLENCE: -

People often harbor misconceptions regarding sexual assault, such as "rape myths," which place the onus of responsibility on the victim rather than the offender. Our society's inaccurate knowledge of sexual assault, long-established gender norms, and tolerance of violence have all contributed to the growth of rape myths. These misconceptions have grown

³Tukuram v Union of India, 1979 AIR 185

⁴Tenzer, L. Y. G. (2019). #MeToo, Statutory Rape Laws, and the persistence of Gender Stereotypes. Utah L.Rev.,117.

⁵Protection of Children from Sexual Offences (POSCO) Act, 2012

⁶Article 14, Constitution of India, 1949

⁷Sanjana Kiran; "Bridging The Gender Gaps: Rape Laws in India" Volume II Issue-3 ISSN: 2581-8503 (accessed ON 01.07.2022;7:00AM) <https://www.whiteblacklegal.co.in/bridging-the-gender-gaps-rape-laws-in-india-by-sanjana-kiran/>

up since most rapes involving non-female victims do not come out for fear that it would bring into doubt the validity of the victim's sexuality.⁸

➤ **Myth: Rape happens only to “certain” types of women.**

Fact: Rape may happen to anybody regardless of their age, gender, color, class, religion, profession, physical ability, sexual orientation, or outward appearance. As opposed to selecting attractive, youthful, or provocatively dressed victims, sexual predators target those who are weak and defenseless. It is possible for the offender to choose a victim who is physically smaller or weaker than themselves, who lives in a secluded area, who is unable to defend themselves, or who is unaware of the impending attack.

➤ **Myth: Men can't be raped or sexually assaulted**

Fact: Approximately 5% to 6% of male college students will be victims of sexual assault or rape. The male population is more vulnerable throughout college. By discussing the subject in an inclusive manner and eliminating the assumptions that all survivors are feminine or that all male victims are homosexual, we can best help male survivors, as we do with all survivors.

The word "victim" has been misunderstood by Indian parliamentarians, who have restricted it to female victims, according to empirical data.

According to the reports:

- PUCL Karnataka surveyed to study human rights infringement in the transgender community and found sexual assault acts quite pervasive in the community.⁹
- Concerning male as rape victims, a survey was carried out between college students in which it was found that 10.5% of men was raped and there were attempts of rape on other 10.5% men.¹⁰

⁸ University of Richmond; Centre for Awareness Response, and Education (CARE) “Rape Myths” (accessed on 01.07.2022; 07:16AM) <https://prevent.richmond.edu/prevention/education/rape-myths.html>

⁹ Human Rights Violations against the transgender community; A study of Kothi and hijra sex workers in Bangalore, India September 2003; Report by People's Union for Civil Liberties Karnataka (PUCL-K) (accessed on 01.07.2022; 08:30AM) <https://mail.google.com/mail/u/0?ui=2&ik=671eb3226c&attid=0.1&permmsgid=msg-a:r-1019496464077976368&th=181bfe22bddc7518&view=att&disp=safe&realattid=181bfe209a1fb6f87301>

¹⁰Harshad Pathak, “Beyond the Binary: Rethinking Gender Neutrality in Indian Rape law” accessed on (01.07.2022,09:00AM) <https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/beyond-the-binary-rethinking-gender-neutrality-in-indian-rape-law/9BC983FB009B7BBDEB78CED0BC5144C0>

- A survey was conducted by the Center for Disease Control and Prevention which observed that out of 43.8% lesbians who were accounted as victims of sexual assault, 67.4% reported female as perpetrators.¹¹
- According to a survey of nearly 5,000 transgender people by the National AIDS Control Organization in 2014-15, one-fifth said they had experienced sexual violence in the past 12 months.¹²

Psychologist Sarah Khan claims that less than 10% of male-on-male rapes are documented because victims, particularly men, do not have access to enough resources and the justice system is ill-equipped to handle such cases.

The patriarchal belief that males are inherently stronger than women lends credence to the argument that men are the only ones capable of committing such a horrific murder. The patriarchal belief that males are too strong and powerful to be victims of such crimes gives rise to the idea that only women may be victims. It is unreasonable to treat women as victims and provide them protection under Section 375[iv] of the Indian Penal Code while neglecting the other genders in our society.

SECTION 375[iv] OF IPC WHAT DOES IT STATES?

Section 375 of the Indian Penal Code gives a clear understanding of the Indian rape laws. In India according to Section 375[iv] of the Indian Penal Code (IPC) rape is defined-

A man is said to commit “rape” if he: -

- a) penetrates his penis, to any extent into the vagina, mouth, urethra or anus of woman or makes her to do so with him or any other person; or
- b) insert to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

¹¹The National Intimate Partner and Sexual Violence Survey (NISVS) 2010, Findings on Victimization by Sexual Orientation (accessed on 01.07.2022;10:30AM) <https://mail.google.com/mail/u/0?ui=2&ik=671eb3226c&attid=0.1&permmsgid=msg-a:r-1352787242986178795&th=181bfdc5f7234e16&view=att&disp=safe&realattid=181bfdc3174fdfbf6141>.

¹² Esha Mitra “India’s rape laws don’t cover transgender people. They say it’s putting them at risk” (accessed on 01.07.2022 ;11:00am) <https://www.cnn.com/2020/12/08/india/india-transgender-rape-laws-intl-hnk-dst/index.html>

d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under certain circumstances mentioned rape is committed as described in the statute and one of the circumstances is that all the above-mentioned description must be against the women's (victim) will [Section 375 (iv)(i)].

From the above-mentioned definition in Section 375 of Indian Penal Code, it can be clearly assumed that rape is always committed by a man against a woman. If a woman forces a man to have intercourse with her, it is considered as a rape, but the same done by man to a woman is considered as rape. IPC 1860 categorizes 'will' and 'consent' under separate heads.¹³

THE PROBLEM WITH INDIAN RAPE LAWS-

The definition of rape given under section 375(iv) of Indian Penal Code has mainly two problems:

- it does not take into account the non-consensual sexual acts on a man by a woman and
- it always considers woman as victim because of which many false rape cases are filled against men to take revenge or undue advantage. It lacks gender neutrality.

“Section 376 is not a gender 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”- Kerala High Court.¹⁴

The Indian Penal Code addresses the penalty for rape under Section 376. It states that a person convicted of rape faces a fine and a sentence of harsh imprisonment that may run up to life in prison, among other punishments.

Consequently, rape laws in India do not discriminate based on gender; more precisely, there are no regulations that apply equally to males and females. As an exception to rules that favor women, Section 377 of the Indian Penal Code [vi] specifies unnatural offenses and makes it a crime to engage in carnal intercourse against the natural order with any person, whether they are mortal or not. There is no legislation that specifically addresses sexual attacks on adult males, but, the POSCO Act does punish such crimes against male children. No one knows

¹³ Dileep Singh v. State of Bihar [(2005)1SCC 88] (INDIA) <https://indiankanoon.org/doc/1181992/> .

¹⁴The Wire Staff, “Rape Should Be Gender- Neutral Offence”: Kerala HC on Breach of Promise to Marry (accessed on 02.07.2022; 08:30AM)<https://thewire.in/law/kerala-high-court-rape-offence-gender-neutral-promise-to-marry>

why this bias exists. India need to have a provision for rape of adult males if it can have one for rape of a male youngster. However, men are now at risk because conservatives believe that men are the only ones who abuse their authority to take advantage of women.

With all these laws against sexual assaults and crimes against children and women, it seems that the equality promised by Article 14[vii] of the Indian Constitution is also absent. Because no legislation should discriminate on the basis of gender, it is imperative that laws enacted with the express purpose of protecting women be informed about the prevalence of sexual offenses committed against men and other genders.¹⁵

WHAT IS GENDER NEUTRALITY WITH RESPECT TO RAPE LAWS?

Every person is guaranteed equality before the law and the right to live with dignity according to Articles 14 and 15 of the Constitution of India, 1950. The right to be free from discrimination based on religion, ethnicity, caste, sex, or place of birth is also guaranteed to all citizens. Unfortunately, males and transgender people in society are consistently denied their rights in situations involving sexual assault, voyeurism, stalking, harassment, and rape.

The umbrella phrase "gender-neutrality" has taken some criticism for being misleading and oversimplified. It simply implies that both genders should be treated equally under rules that are particular to gender, even if all genders are equally likely to be victims of the same kind of crime. Sexual assault and other forms of sexual violence may occur in this context, whether the victim is a man or a transgender person¹⁶.

There are two major perspectives on Gender Neutrality in Rape laws.

- A) Victim
- B) Perpetrator
- **Neutrality with respect to the victim**

Regrettably, both Indian law and culture maintain the outdated notion that rape victims must be female. The conventional wisdom is that rapists act out of pure sexual desire, yet there are many other possible motivations for committing this heinous crime. There are other possible explanations, too, such as the fact that certain groups, religions, or castes see displays of sexual dominance as a sign of supremacy. In addition to sexual desire, the desire to shame the

¹⁵ Sanjana Kiran; "Bridging The Gender Gaps: Rape Laws in India" (accessed on 02.07.2022; 09:46AM) <https://www.whiteblacklegal.co.in/bridging-the-gender-gaps-rape-laws-in-india-by-sanjana-kiran/>

¹⁶Philip N.S. Rumney "In Defence of Gender Neutrality Within Rape" (accessed on 02.07.2022; 10:30AM) <https://mail.google.com/mail/u/0?ui=2&ik=671eb3226c&attid=0.1&permmsgid=msg-a:r-7097317532281372364&th=181c83eeddce102b&view=att&disp=safe&realattid=181c83ed1e8321b6d251>

victim could be a driving force behind sexual assault. As a result, sexual assault may happen to anyone, including transgender people and males.

Gender now is seen as more malleable than in the past. The idea that a person's physical attributes might be more feminine or more masculine. Consequently, when people experience sexual assault because they do not fit into society's narrow definition of male and female, society instinctively turns a blind eye. Legislators also fail to address the hardships faced by the transgender population, which include both hijras and kothis.

➤ **Transgender Victimization-**

People who identify as transgender do not fit well into any of the binary gender categories. "Hijras, kothis, and trans-sexual" are the members of this group. Some switch genders via medical procedures called sex-change surgeries, while others just assume the responsibilities of the other gender. Because of their flexible sexuality, they are susceptible to sexual assault.

Research on transgender people's rights in Bangalore was conducted by the Peoples' Union for Civil Liberties Karnataka (PUCL-K). According to their research, this group in India is more vulnerable to physical and sexual assault. According to the PUCL-K Report, transgender people's human rights are being violated due to a lack of understanding on both the legal and social levels¹⁷.

➤ **Male Victimization-**

Coercive man-on-man sexual relations are criminalized in India under Section 377 of the Indian Penal Code because they are seen to be contrary to the natural order. The logic behind this classification has a huge hole in it. An amalgam of "male on male rape" and gay couples engaging in freely consenting carnal intercourse.

A three-person Verma Committee called for gender inclusivity in victimization under Section 375 in 2013. Victims of rape, whether male or transsexual, must be recognized by the law¹⁸.

The committee also reasoned that, regardless of gender conformities, criminalizing non-consensual sexual intercourse is an unnecessary step before granting sexual minorities the

¹⁷Aparajita Tyagi "Trans Rights Against Sexual Offences In India: Is Protection From Rape Still A Far Cry" (accessed on 02.07.2022; 01PM) <https://criminallawstudiesnluj.wordpress.com/2022/01/29/trans-rights-against-sexual-offences-in-india-is-protection-from-rape-still-a-far-cry%ef%bf%bc/>

¹⁸Shubhank Suman; "Critical Analysis of Rape of Male in India" (accessed on 02.07.2022; 02:15PM) <https://blog.ipleaders.in/critical-analysis-of-rape-of-male-in-india/>

freedom to engage in consensual sex. There is no difference between a woman's and their sexual assault.

“Men who are sexually assaulted shall have the same protection as female victims, and women who sexually assault men or other women should be liable for conviction as conventional”- Delhi High Court (1996)¹⁹

- **Neutrality with respect to perpetrator**

Another ongoing debate is whether a female can be a perpetrator if Rape laws are made gender-inclusive. If so then there are 2 possibilities:

- **Female on male rape**

Firstly, there are some who contend that women simply cannot rape males due to biological and physical constraints. Some experts and academics have said that males need arousal before they are ready for sexual intercourse, which means that women cannot technically rape men. So, if a woman were to force herself on a guy, he would be so confused that he would be unable to engage in sexual activity without his consent.

Furthermore, the social reality is not shown. Despite claims to the contrary, it is not impossible for a woman to commit rape on a male. There has never been a time when such a situation was brought to light. Until real situations arise, there is insufficient evidence to establish gender-neutral legislation.

All of the aforementioned points demonstrate how ignorant and resistant to change our culture is up to this point.

- **Female on female rape**

In the case of **State Government v. Sheodayal²⁰**, the Madhya Pradesh HC held that a woman can violate the modesty of another woman under Section 354 of Indian Penal Code, 1860 (use of criminal force with the intent to violate modesty of a woman). In **Priya Patel v. State of MP²¹**, the Apex Court considered the question of whether a group of female perpetrators can gang rape another woman.

Section 376(2) (g) of IPC utilises the term ‘whoever’ [gang rape]. Technically whenever a gang rape takes place the act of penetration may not be committed by each member; any act done in furtherance of the common intention deems each participant to have committed gang rape. The Court still held that it is impossible for a female to rape another female or even

¹⁹The Delhi High Court in May 1996 while hearing the mother of a six-year-old girl, in the case of Smt Sudesh Jhaku vs KCJ (1996)

²⁰State Government, Madhya Pradesh v. SheodayalGurudayal Accused. (1954) (INDIA)

²¹Priya Patel v State of Madhya Pradesh [(2006) 6 SCC 263] (INDIA)

have the intention to rape. This judgment is definitely flawed because the act of penetration itself is not a requirement, the intention is enough even if it's in the form of abetment.

“Gender-neutral reforms are not designed to make gender irrelevant in our understanding of sexual violence; in fact, gender is central to any understanding of how and why sexual violence occurs. What is clear, however, is that while females are the main victims of sexual violence and males the main perpetrators, one still has to consider how sexual assaults beyond the male-on-female paradigm are to be labelled by the criminal law.”-Phil Rumney²².

CALL FOR GENDERLESS RAPE LAWS NOT NEW

Gender neutrality in Indian rape laws was first time dealt in **Sudesh Jhaku v. K.C. Jhaku²³** wherein the court said that sexually assaulted men should be given the same protection of the law as given to female victims. In **Sakshi v. Union of India²⁴**, the Apex Court directed the whole issue to law commission. Consequently, the study from the 172nd Law Commission suggested that rape legislation should be neutral. The Nirbhaya Rape Case shocked the country before these suggestions could be turned into law in 2012 via the Criminal Law Amendment Bill. Subsequently, the Indian government appointed the Justice Verma Committee (JVC) to study the issue of rape legislation and recommend changes. Instead of limiting the definition of rape under Section 375 of the Indian Penal Code, 1860 to just penile-vaginal penetration, the JVC study suggested expanding its scope. Curiously, it also suggested gender-neutral rape legislation. Criminal Law Amendment Bill 2013 promulgated these proposals.

“While there were some supports for seeing men as victims, most committee members agreed that including women as perpetrators of rape would result in harassment of an already oppressed group”- Justice Verma Committee²⁵

A number of women's organizations voiced strong opposition to the second suggestion. In addition to increasing women's vulnerability, they said that the bill's features undermine the spirit of the JVC committee report. They argue that the already dominant male group would

²²Arjit Mishra “Gender Neutral Rape laws: Need of the Hour” (accessed on 03.07.2022; 08:00AM)<https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/amp/>

²³Smt. Sudesh Jhaku vs. K.C.J. And Others (1996) (INDIA)

²⁴ Sakshi vs Union of India (2004) (INDIA)

²⁵Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The Committee submitted its report on January 23, 2013.

gain even more influence as a result of gender-neutral rape rules. In response to these concerns, the government changed its position, and the Criminal Law Amendment Act of 2013 maintained the gender-specific character of rape statutes. A measure introduced by Mr. KTS Tulsi to gender-neutralize rape legislation has not been enacted and there has been no update on its status. This is the most recent progress in this area.

Discussion by the JVC did include the possibility of gender-neutral rape law. There are two ways to look at gender neutrality.

The first: Could men be victims of sexual assault? And,

The second: the more contentious one, could women be perpetrators of sexual assault?²⁶

GENDER NEUTRAL RAPE LAWS: NEED OF THE HOUR

It is imperative to assert the contention of making rape laws gender-neutral with a human rights approach. In the case of **Bodhisattwa v. Shubhra Chakraborty and Narendra Kumar v. State**²⁷, The argument that rape infringes upon the fundamental human rights guaranteed by the Indian constitution, including the right to life and personal liberty under Article 21, was upheld by the Supreme Court of India. The conventional understanding of rape in India, according to which only women may be victims, means that men's human rights are violated by the country's rape laws. The absence of statistical evidence supporting male rape is the most significant argument advanced in favor of gender-specific rape legislation. There is no truth to this claim. There is a dearth of statistical evidence since fewer such instances are reported. This doesn't mean that such occurrences can't happen. **Primary reasons behind less reporting of such cases are as follows**²⁸:

➤ **Anti-masculinity stigma**

It is argued that patriarchal societal norms limit the ability of males to report sexual assaults in when women are the perpetrators. Hegemonic masculinity, which includes the stereotypes that males are not feminine, violent, and heterosexual, is another term for this stigma. The formation of an unfounded idea that a male sexual victim would be stereotyped as a female occurs as a result of this characterisation. It is argued that patriarchal societal norms limit the ability of males to report sexual assaults in when women are the perpetrators. Hegemonic

²⁶Avantika Mehta "Why it is time for India to Consider Gender-Neutral Rape Laws" (accessed on 03.07.2022; 09:00AM)<https://article-14.com/post/why-it-is-time-for-india-to-consider-gender-neutral-rape-laws-6136d766effef>

²⁷Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty 1966 Air 922

²⁸Arjit Mishra "Gender Neutral Rape Laws: Need of the Hour" (accessed on 03.07.2022; 09:30AM)<https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/amp/>

masculinity, which includes the stereotypes that males are not feminine, violent, and heterosexual, is another term for this stigma. The formation of an unfounded idea that a male sexual victim would be stereotyped as a female occurs as a result of this characterisation.

➤ **No legislation to punish convicts of male rape**

The lack of legislation that penalizes male-rape convictions, together with the pervasive gender-specific character of India's rape laws, has discouraged males from filing cases. The POCSO Act of 2012 does not discriminate based on gender when it comes to sexual assault cases involving minors, yet adult male culture continues to wish for rape laws that do not discriminate based on gender.

All of the arguments mentioned above strongly suggest that the system should be made gender-neutral. According to the decision in the case of *State of Himachal Pradesh v. Shree Kant Shekari*²⁹, the victim's Right to Life under Article 21 of the Indian Constitution is violated when the crime of rape is committed. Since this is a well-established fact, rape legislation need to include not just women but also males and any abuses of their right to life. Since the right to life extends to all human beings, regardless of gender, laws should address assaults on women and men equally. It is equally important to acknowledge the potential of male victims of rape.

JUDICIAL PERSPECTIVE

The need of gender neutrality was first acknowledged by Justice Jaspal Singh of the Delhi High Court in 1996. The Supreme Court had to decide in *Sudesh Jhaku v. KC Jhaku* whether non-penetrative sexual actions may be included in the earlier (pre-2013) definition of rape. Still, the court's opinion on gender neutrality went beyond what was originally required of it. Justice Jaspal Singh made it plain that the court lacks the authority to address the matter at hand since it is entirely a matter of legislative need. Legislators are the only ones capable of effectively carving out and crafting gender-neutral programs. A legislative reconstruction of the rape offense is necessary, the court said.

In the 1997 case of *Sakshi v. Union of India*, a group located in Delhi called Sakshi sought reconsideration of the issue that had come up in the Jhaku case by submitting a writ petition

²⁹*State of Himachal Pradesh v. Shree Kant Shekari*[(2004) 8 SCC 153]

to the Supreme Court of India. Though it rejected the appeal, India's highest court did identify the "precise issues" that the Law Commission of India would have to address in 1999³⁰.

CRIMINAL LAW AMENDMENT BILL 2019- THE MAIN IDEA BEHIND THIS BILL

The Indian Constitution forbids discrimination on the basis of gender and ensures that all individuals have the right to life, liberty, and equal protection under the law.

Since the beginning of time, gender-specific regulations have been included into Indian legislations. However, the changing nature of law is its greatest asset. The path to social transformation that Indian society needs to break free from preconceptions is gender-neutrality in legislation, which is especially important in light of the current circumstances and difficulties.

To be gender-neutral is to reject the social norms that define and enforce hierarchies according to biological gender. Based on this, in July 2019, eminent lawyer and Rajya Sabha parliamentarian KTS Tulsi introduced a bill to gender-neutralize sexual offenses in India.

The goal is to ensure that both genders are properly protected in situations of sexual offenses under the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872, without any kind of discrimination. To achieve this, it is suggested that the terms "any person" be substituted for "any man" or "any woman" in several sections of the Indian Penal Code, 1860. This would apply in particular to Sections 354A, 354B, 354C, 354D, 375, and 376, which deal with sexual offenses committed against women.

It also aims to integrate transgender people within the scope of sexual offense statutes and puts the Supreme Court's recognition of transgender people into context. Victims of rape and sexual assault, whether they are transgender or not, deserve our respect and compassion, and that is the goal of this law. A problem's lack of popular discussion is no indication that it does not exist; this is an extremely important point to keep in mind. Gender neutrality also has no intention of diminishing women's experiences; on the contrary, it aspires to provide safety for victims of comparable trauma and loss.³¹

“Law needs to be balanced. The balance has been disturbed. All sexual offences should be gender-neutral. Men, women, and other genders can be perpetrators and also victims of these offences. Men, women and others need to be protected”-Delhi High Court.

³⁰Sankalpita Pal “All you need to know about gender inequality in rape laws” (accessed on 04.07.2022; 11:00AM) <https://blog.iplayers.in/need-know-gender-inequality-rape-laws/>

³¹Anmol Mathur “The Criminal Law (Amendment) Bill, 2019 and Gender-Neutral Sexual Offences in India”; The Criminal Law Blog (accessed on 04.07.2022; 04:00PM) <https://criminallawstudiesnluj.wordpress.com/2020/03/27/the-criminal-law-amendment-bill-2019-and-gender-neutral-sexual-offences-in-india/>

CONCLUSION- A WAY FORWARD

Coexistence and mutual support between sexes is essential to the well-being of both individuals and society as a whole. Unfortunately, the most exploited part of social life is this bond, which is the cornerstone of society. The elimination of rigid gender norms and the acceptance of a wide range of gender expressions should be high on the list of priorities for achieving true gender parity. Aiming to totally desexualize rape is not the goal of gender neutrality in rape legislation. On the contrary, it aspires to broaden the scope of rape victims. The conventional gender binary that has long been associated with rape is something it seeks to dismantle.

The second point is that sexual assault against men and transgender people is common in India, regardless of the victim's gender. All people's constitutionally protected rights are respected in a gender-neutral society because everyone is treated fairly. Ultimately, it is safe to say that rape in India, particularly rape between men, does occur. The right to equality and the societal shame associated with male rape are arguments put forward by those who advocate for full gender neutrality. We must remember after weighing the pros and cons that gender-neutral legislation and the acceptance of fluid genders are crucial, but that they must not put female rape victims in an unsafe setting.

Notably, Indian society has achieved great strides in the twenty-first century. Not only was the existence of the third gender acknowledged, but they were also accepted as members of Indian society. It is only fair that the Indian court system uphold their rights after they fought so hard for recognition. Creating gender-neutral rules would not diminish the experiences of either gender, but will instead encourage more victims to seek aid and justice.

“The ideal goal is to have one law on sexual assault that applies to people across the gender spectrum. But to start with, 377 can be reformulated and act as a second regime of law for sex crimes against people whose sexualities are not heterosexual,”- Adv. Anand Grover³²

³²Laxman Sreekanth, “Gender-biased rape laws must change” (accessed on 04.07.2022;05:00PM)<https://www.deccanherald.com/opinion/in-perspective/gender-biased-rape-laws-must-change-943721.html>