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REDEFINING JUSTICE: AN EXAMINATION OF GENDER-NEUTRAL SEXUAL OFFENSE LAWS IN INDIA

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ABSTRACT

The Bhartiya Nyaya Sanhita (BNS), India's criminal code, exhibits significant gender bias, particularly in its handling of rape laws. The BNS defines rape exclusively as a crime against women, excluding men and non-binary individuals from legal recognition and protection. This gender-specific definition neglects the reality of sexual violence faced by males and non-binary persons, resulting in a substantial gap in justice and support for these victims. Additionally, the BNS does not recognize marital rape as a crime, perpetuating the outdated notion of implied consent within marriage and leaving married women without adequate legal protection against spousal sexual violence. The legal framework also fails to address scenarios where women are perpetrators of sexual violence, inadequately protecting male victims from such acts. This oversight, compounded by societal stigma and the lack of legal recognition, leads to underreporting and non-prosecution of sexual violence cases perpetrated by women or transgender individuals. Furthermore, support systems available are primarily designed for female survivors, making them inadequate or inaccessible for others. A comparative analysis of international rape laws reveals more inclusive approaches in countries like the United Kingdom and Canada, where rape is defined in a gender-neutral manner, recognizing all individuals as potential victims. To rectify these biases, it is recommended that the BNS be amended to include a gender-neutral definition of rape, recognize marital rape, and develop legal provisions to address sexual violence committed by women.

Keywords: Gender Bias, Marital Rape, Male and Non-Binary Survivors, Legal Reforms, Rape

Introduction

In India, men are traditionally seen as the heads of families, which often means they are rarely recognized as victims of sexual offences. A common belief exists that men are too strong to be overpowered, while victims of sexual violence are viewed as weak. This perception discourages men from reporting such crimes due to societal judgment and the fear of a loss of masculinity. Similarly, women are often perceived as the "weaker sex," making it difficult for society to accept that women can also be perpetrators of sexual offences. This paper explores how patriarchal views in Indian society hinder the extension of legal protections for sexual offences to all genders.

One significant challenge in proving sexual crimes against men is the misconception that a physical reaction, such as an erection, equals consent. This is as inaccurate as assuming a woman consents to a sexual act based on her natural bodily responses. The essay will review feminist perspectives both for and against gender-neutral laws on sexual offences and highlight the legal gaps that make such legislation necessary. Despite the Indian Constitution's promotion of gender equality, laws on sexual offences, particularly Section 375 of the Indian Penal Code (IPC), remain gender-specific, defining rape only as a crime against women.

Gender-Neutral Laws in India

The framers of the Indian Constitution aimed to establish equal rights for all citizens, regardless of gender. However, Indian rape laws have historically adhered to a male-female paradigm, where women are considered the only victims and men the sole perpetrators. While Section 375 of the Indian Penal Code (IPC) has undergone multiple amendments, this traditional perception remains largely unchanged.

The issue of gender neutrality in sexual assault laws was first addressed in **Sudesh Jhaku v. K.C. Jhaku**¹⁷⁹⁷, where the court emphasized that men who experience sexual violence should receive the same legal protection as women. Later, in **Sakshi v. Union of India**¹⁷⁹⁸, the Supreme Court referred the matter to the Law Commission. In its 172nd report, the Commission highlighted the gender bias in existing sexual abuse laws and recommended reforms.

In response to the public outcry, the Justice Verma Committee was established to propose essential reforms in sexual offense laws. One of its key recommendations was to make these laws gender-neutral. This suggestion was later included in the Criminal Law (Amendment) Bill, 2013.

Despite these recommendations, there was significant opposition, particularly from women's rights groups. Critics argued that gender-neutral laws could be misused and might weaken the protections available to women, thereby increasing their vulnerability. They contended that such neutrality could inadvertently favor powerful male offenders.

Historical Context of Sexual Offense Laws in India

The historical context of sexual offense laws in India reveals a complex interplay between colonial legacies and contemporary social movements. Initially codified during British

colonial rule, Indian sexual offense laws reflected a patriarchal understanding of gender roles, often prioritizing familial honor over individual rights. As highlighted by the Special Rapporteur on Violence Against Women, sexual violence against women in India is part of a troubling continuum, with statistics indicating that a woman is raped roughly every twenty minutes in the country¹⁷⁹⁹. This alarming prevalence has galvanized various social movements advocating for legal reforms, echoing trends seen in other regions, such as the changes driven by the #MeToo Movement in the United States¹⁸⁰⁰. Such activism has prompted a reevaluation of existing laws, paving the way for gender-neutral legislation that aims to address sexual offenses comprehensively and equitably in modern India.

Challenges in Gender-Sensitizing Laws

Patriarchy

According to the Oxford English Dictionary, patriarchy refers to a system where men hold primary power and control. Indian society is deeply patriarchal, dictating that men must adhere to rigid behavioral norms. The "ideal man" is expected to suppress emotions and avoid public displays of vulnerability. This mindset fuels gender inequality and makes it difficult for men to speak out about gender equality. Societal expectations that men are always interested in sex undermine the concept of male consent, stripping men of sexual autonomy and reinforcing the belief that they cannot be victims of sexual offences¹⁸⁰¹.

Feminist perspectives, such as Simone de Beauvoir's assertion that "One is not born, but rather becomes a woman" and Nivedita Menon's critiques of patriarchal legal interpretations, highlight how society's expectations disadvantage both women and

¹⁷⁹⁷ Sudesh Jhaku v. K.C.J. 1998 CriLJ 2428, 62 (1996) DLT 563, 1996 (38) DRJ 22

¹⁷⁹⁸ Sakshi v. Union of India AIR 2004 SC 3566, 2004 (2) ALD Cri 504

¹⁷⁹⁹ Angana P. Chatterji et al., "Access to Justice For Women: India's Response to Sexual Violence in Conflict and Social Upheaval", 2015

¹⁸⁰⁰ Grous et al., "Critical Discourse Analysis: Sexual Violence in Maine Department of Public Safety (DPS) Crime in Maine Reports", 2023

¹⁸⁰¹ Ayush Verma, *All You Need to Know about Gender Inequality in Rape Laws*, IPLEADERS <https://blog.ipleaders.in/need-know-gender-inequality-rape-laws/>

men. Courts often downplay the seriousness of crimes or disbelieve victims based on these assumptions.

Misinterpretation of Physiological Factors

One common argument against male sexual assault victims is that an erection or ejaculation indicates consent. However, physiological responses during assault, like erections, are often involuntary and not reflective of consent. This misconception has been debunked in U.S. courts, and similar recognition is needed in India to combat this bias.

Gender Stereotyping by the Media

The media shapes societal perceptions, and Indian media rarely depicts men as victims of sexual assault. Films often reinforce stereotypes of masculinity and use molestation as a comic trope, while transgender and gay characters are also portrayed negatively. Changing these portrayals is essential for societal progress.¹⁸⁰²

The Reality of Sexual Offences

Despite the societal paradigm of male perpetrators and female victims, sexual offences involving male and non-binary victims are more prevalent than recognized. A significant portion of men report being coerced into sex, and misconceptions about male rape further silence victims. Similarly, male child abuse is often hidden due to low disclosure rates. The existing legal framework fails to protect all genders, emphasizing the need for gender-neutral laws.

Sexual Abuse Against Women, Men, and the LGBTQ Community

While women have historically been recognized as the primary victims of sexual abuse, it is essential to acknowledge that men and LGBTQ individuals are also affected. Statistics from the Centers for Disease Control and Prevention (CDC) show that sexual abuse rates are

significant across all genders, emphasizing the need for more inclusive legal protections¹⁸⁰³.

According to the report (CDC) centers for Disease Control and Prevention–

- Nearly 1 in 5 women have experienced Sexual abuse during her lifetime.
- 1 in 3 female Victims experienced it for the First time under age 11 to 17 years old.
- 1 in 8 female victims reported that it occurred before the age of 10

Sexual Offences and the Law

Transgender individuals are largely overlooked in existing sexual offence laws. The Transgender Persons (Protection of Rights) Act, 2019 prescribes minimal punishment for sexual abuse against transgender people, highlighting legislative neglect. Additionally, the lack of legal recognition of male victims and the exclusion of women as perpetrators from Section 375 of the IPC further demonstrates the urgent need for legal reform.

International Perspectives on Gender-Neutral Rape Laws

The United Kingdom

The UK's **Sexual Offences Act, 2003** adopts a gender-neutral approach, ensuring that any individual, regardless of gender, can be a victim or perpetrator of sexual assault¹⁸⁰⁴

The United States

Several U.S. states have gender-neutral rape laws that define sexual assault based on the act rather than the identity of the perpetrator or victim.

¹⁸⁰² Bajpai, G.S., and Raghav Mendiratta. "GENDER NOTIONS IN JUDGMENTS OF RAPE CASES: FACING THE DISTURBING REALITY." *Journal of the Indian Law Institute* 60, no. 3 (2018): 298–311. <https://www.jstor.org/stable/26826643>.

¹⁸⁰³ ILSIJLM, *A Critical Analysis on Gender Biased Rape Laws in India: Shruti Gupta*, ILSIJLM <https://ilsijlm.indianlegalsolution.com/a-critical-analysis-on-gender-biased-rape-laws-in-india/>

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Canada

Canada's **Criminal Code** defines sexual assault in a gender-neutral manner, recognizing the rights of all victims.

Recommendations

1. **Amend Section 375 IPC:** Modify the definition of rape to be gender-neutral, acknowledging that all individuals, regardless of gender, can be victims.
2. **Create Special Provisions for Vulnerable Communities:** Address the specific needs of male and transgender victims, similar to protections provided for women.
3. **Judicial Sensitization:** Train judges and law enforcement officers to handle cases involving male and transgender victims with sensitivity.
4. **Public Awareness Campaigns:** Challenge societal stereotypes that prevent male and transgender victims from reporting sexual assault.
5. **Introduce Safeguards Against Misuse:** Implement measures to prevent false accusations without diluting the protections for genuine victims.

Conclusion

The patriarchal framework of Indian society, coupled with gender-specific laws, has long overlooked men, transgender individuals, and non-binary persons as potential victims of sexual offences. This essay has highlighted the significant legal and societal challenges faced by these groups, including harmful stereotypes, misconceptions about consent, and media misrepresentation. While progress has been made in expanding protections for women, the legal system remains largely inadequate in addressing the sexual victimization of all genders. A move towards gender-neutral sexual offence laws is essential to ensure justice for all individuals, irrespective of their gender, and to dismantle the rigid societal norms that hinder such progress.

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