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BREAKING THE SILENCE: THE NEED FOR GENDER-NEUTRAL SEXUAL ASSAULT LAWS IN INDIA

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Abstract

Sexual assault laws in India have historically been framed within a gender-specific context, predominantly recognizing women as victims and men as perpetrators. This binary approach not only simplifies the complex nature of sexual violence but also marginalizes male and transgender victims, leaving them without adequate legal protection. As societal norms evolve and the recognition of diverse gender identities becomes increasingly important, there is a pressing need to reform India's sexual assault laws to adopt a gender-neutral framework. This paper will explore the limitations of the current legal framework, particularly focusing on the definitions and provisions outlined in the Bharatiya Nyaya Sanhita. It will analyze how the existing laws fail to encompass the experiences of all victims, thereby perpetuating harmful stereotypes and denying justice to a significant portion of the population. The discussion will highlight the implications of this exclusion, particularly for male and transgender individuals who often face societal stigma and disbelief when they come forward with their experiences of sexual violence. In addition to examining the Indian context, the paper will draw comparisons with global best practices in sexual assault legislation. It will highlight how countries such as the United Kingdom, Canada, and Australia have successfully implemented gender-neutral laws that recognize both male and female victims, providing a more comprehensive approach to addressing sexual violence. The paper will also address the resistance against gender-neutral laws within India, particularly from certain activist groups who fear that such reforms may dilute the protections currently afforded to women. It will critically assess these concerns, arguing that the push for gender-neutral sexual assault laws is not a challenge to women's rights but rather a vital step toward achieving comprehensive justice for all survivors.

Keywords: *Gender-neutral laws, sexual violence, legal reform, LGBTQ+ rights, Indian judiciary, male victims, transgender rights, societal norms, legal protections.*

Introduction

Imagine a bustling street in Delhi, where the air is thick with the sounds of honking cars and the chatter of pedestrians. Among them is Priya, a young woman who has just finished a late shift at work. As she walks home, she feels a sense of freedom, but that feeling is abruptly shattered when she is attacked. The trauma of that moment will haunt her, but what follows is often just as harrowing: the process of seeking justice. When she approaches the police, she is met with scepticism, her clothing scrutinized, and her character questioned. "What were you

doing out so late?" they ask as if her presence in the world at night somehow justifies the violence inflicted upon her.

Now, let us flip the script. Meet Rohan, a young man who faces a similar fate. He is assaulted, but when he comes forward, he is met with disbelief and ridicule. "Men don't get assaulted," society tells him, leaving him feeling isolated and ashamed. These scenarios are not just figments of imagination; they reflect the grim reality faced by countless individuals in India today.

The statistics are staggering: according to the National Crime Records Bureau, over 2.25 lakh

crimes against women were reported in 2011 alone, with a significant portion being sexual assaults. Yet, the legal framework designed to protect these victims often falls short. The Bharatiya Nyaya Sanhita (BNS), which replaces the Indian Penal Code (IPC), continues to define sexual assault in a manner that excludes male and transgender victims. This exclusion not only denies justice but also perpetuates harmful stereotypes that assume men are always dominant and women are always vulnerable.

A society that seeks justice must ensure that the law protects all victims, irrespective of gender. The assumption that men cannot be victims of sexual violence is deeply flawed and has resulted in a legal vacuum where male and transgender victims suffer in silence. This issue is not about diminishing the rights of women but about ensuring that every survivor—regardless of gender—has access to justice. As feminist legal scholar Catherine MacKinnon argues, sexual violence laws should not be about protecting a particular gender but about protecting human dignity.¹⁸⁹⁰

One of the key arguments against gender-neutral laws is that they might be misused. While concerns about false accusations are valid, they cannot be used as a blanket justification to deny protection to genuine victims. The same logic applies to laws protecting women—while false cases exist, they do not negate the need for those laws. Justice cannot be selective; it must be inclusive.

Consider this imaginary case of a boy who was sexually assaulted by a senior in his college. When he attempted to file a complaint, he was laughed at and told that “men don’t get raped.” This societal attitude is a direct result of legal and cultural norms that refuse to acknowledge male and transgender victims. Similarly, cases involving transgender individuals often go unreported because the legal system does not provide them with any clear protection. Such instances highlight the urgent need for reform.

The Legal Framework of Sexual Assault in India

Definition of Sexual Assault Under Bharatiya Nyaya Sanhita

Under the Bharatiya Nyaya Sanhita, 2023 (BNS), sexual assault continues to be framed in a binary manner. Section 63 defines rape exclusively in terms of a man committing the offence against a woman.¹⁸⁹¹ This definition fails to acknowledge that men and transgender individuals can also be victims of sexual violence. While the Protection of Children from Sexual Offences (POCSO) Act provides gender-neutral protections for minors, there is no corresponding law for adult male or transgender victims. This exclusion contradicts Article 14 of the Indian Constitution, which guarantees equality before the law.¹⁸⁹²

Judicial Perspective on Gender-Neutrality in Sexual Offences

Several landmark cases have shaped the discourse on sexual assault laws in India.

1. **Sakshi v. Union of India (2004):** This case emphasised the need to expand the legal definition of sexual offences to include various forms of sexual violence beyond traditional rape. The court acknowledged that the existing framework was insufficient but did not push for gender neutrality.¹⁸⁹³
2. **National Legal Services Authority v. Union of India (2014):** In this landmark case, the Supreme Court recognized transgender persons as the third gender and directed the government to take steps to ensure their legal protection. However, despite this ruling, sexual assault laws continue to exclude them.¹⁸⁹⁴
3. **Anuj Garg v. Hotel Association of India (2008):** The Supreme Court ruled that laws based on outdated gender

¹⁸⁹⁰ Catherine MacKinnon, *Toward a Feminist Theory of the State* (1989)

¹⁸⁹¹ Bharatiya Nyaya Sanhita, 2023.

¹⁸⁹² National Crime Records Bureau, "Crime in India 2011," Ministry of Home Affairs, Government of India.

¹⁸⁹³ Sakshi v. Union of India, (2004) 5 SCC 518.

¹⁸⁹⁴ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

stereotypes violate constitutional guarantees of equality. This precedent supports the argument that sexual assault laws should be reformed to be gender-neutral.¹⁸⁹⁵

How Other Countries Handle Sexual Assault Laws

When we talk about progressive legal systems, it's always useful to look at what other countries have done. Many nations, recognizing the need for inclusivity, have moved towards gender-neutral sexual assault laws.

1. **United Kingdom:** The Sexual Offences Act of 2003 is a landmark legislation that does not limit the definition of rape to female victims. It recognizes that both men and women can be victims and perpetrators of sexual violence.
2. **Canada:** The Canadian Criminal Code defines sexual assault in gender-neutral terms, ensuring that male and transgender victims are also acknowledged in legal proceedings.
3. **Australia:** Many Australian states have reformed their laws to be more inclusive, recognizing that sexual violence is not limited to one gender.

If these countries have successfully transitioned to a gender-neutral legal framework, why is India still stuck in the past?

An Indian Perspective: The Struggle for Inclusivity

In India, the resistance to gender-neutral sexual assault laws is deeply rooted in societal norms, gender stereotypes, and legal biases that have historically framed sexual violence as a crime where women are the only possible victims and men are always perpetrators. This binary perception is outdated, harmful, and exclusionary. However, despite growing awareness and legal advancements in other countries, the Indian legal system has been reluctant to recognize male and transgender

victims, largely due to misplaced fears, cultural biases, and concerns over misuse of the law.

One of the primary arguments against gender neutrality in sexual violence laws is the belief that men, being physically stronger, cannot be victims of sexual violence. This assumption is both flawed and dangerous. Strength and masculinity are not deterrents to sexual violence, as seen in numerous reported cases where men have been drugged, coerced, blackmailed, or overpowered into non-consensual sexual acts. Studies show that a significant percentage of male sexual assault victims experience shame and stigma that prevent them from coming forward.

For example, a 2018 survey by the Centre for Civil Society found that over 16% of Indian men had faced some form of sexual violence in their lifetime but never reported it due to fear of ridicule and lack of legal recourse. Similarly, a 2021 report by the International Commission of Jurists (ICJ) highlighted that transgender persons in India are disproportionately subjected to sexual violence, yet their cases rarely make it to court due to legal loopholes and non-recognition under sexual offence laws.

The Myth of Legal Misuse and False Accusations

Another argument frequently raised is the fear of false accusations if sexual assault laws are made gender-neutral. Critics argue that women might misuse such laws to falsely accuse men, leading to legal harassment and wrongful convictions. While false accusations exist in all types of legal cases, they do not form the majority of cases, and such concerns should not justify denying protection to genuine victims.

It is crucial to note that legal safeguards against false accusations already exist in India's legal system. For instance, Section 211 of the Indian Penal Code (IPC) penalizes false accusations with imprisonment and fines. Additionally, courts have frequently ruled that

¹⁸⁹⁵ Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

the possibility of misuse is not a valid reason to deny justice to legitimate victims.

Recognizing Sexual Violence Beyond Gender

A just legal system should not discriminate between survivors based on their gender. Sexual violence is about power, control, and violation of consent, not just physical strength. By refusing to recognize male and transgender victims, India's legal framework essentially invalidates their trauma, pushing them into silence and social isolation.

This exclusion is not just a legal gap but a societal failure. Many male and transgender survivors internalize their trauma, leading to severe mental health consequences, including depression, anxiety, PTSD, and suicidal thoughts. A 2019 study by the Indian Journal of Psychiatry found that male sexual assault survivors were significantly more likely to suffer from long-term psychological trauma due to the absence of social and legal support.

Recommendations for Legal Reform

If we truly believe in equality, then legal protections must extend to all individuals, irrespective of gender. This is not about diluting women's rights but about ensuring that every survivor has equal access to justice. The idea of gender-neutral laws is not to shift protections away from women but to broaden the scope so that no survivor is left behind.

To address the pressing need for gender-neutral sexual assault laws in India, several reforms are necessary:

1. Amend the Bharatiya Nyaya Sanhita: Redefine sexual assault in a gender-neutral manner to include all victims, regardless of gender identity.
2. Ensure Legal Safeguards: Implement measures to protect against false accusations without undermining protections for actual survivors. This could include establishing a framework for investigating claims thoroughly and sensitively.
3. Establish Dedicated Support Systems: Create support systems for male and transgender

victims, including counselling services and legal aid, to ensure they feel safe coming forward.

4. Public Awareness Campaigns: Launch campaigns to educate the public on male and transgender victimization and destigmatize reporting sexual violence. This could involve community outreach programs and partnerships with NGOs.

5. Specialized Training for Law Enforcement: Sensitize police officers and judiciary members to handle cases of male and transgender sexual violence with empathy and professionalism. This training should include understanding the unique challenges faced by these groups.

The Urgency of Change

India's sexual assault laws, designed with a binary understanding of gender, leave significant gaps that fail to protect all survivors. The exclusion of male and transgender victims from legal protections is not just an oversight—it is an outright denial of justice. The very essence of justice lies in its accessibility to all, yet our current legal framework systematically disregards an entire section of survivors based on outdated gender norms.

Consider a scenario: A 25-year-old man, is drugged and sexually assaulted at a party. When he regains consciousness, he is in pain and deeply distressed. However, upon confiding in a friend, he is met with disbelief. "You're a guy. How can you be assaulted?" The shame and stigma force him into silence, his trauma left unacknowledged by both society and the legal system.

Now think about, a transgender woman who faces continuous sexual harassment at her workplace. Her employer, emboldened by the absence of legal repercussions, exploits her vulnerability. When she finally gathers the courage to approach the police, they mock her identity rather than help her. Without legal backing, she is left defenceless.

This is where India must take a stand. The fight for gender-neutral sexual assault laws is not a

fight against women's rights but a step toward comprehensive justice. It is about ensuring that no survivor is left behind simply because of their gender identity. It is about recognizing that suffering knows no gender and that legal protections should reflect this truth.

Moving Forward: The Road to Reform

Reforming India's sexual assault laws requires political will, societal acceptance, and legal adaptation. Policymakers must step forward with amendments that redefine sexual violence in a gender-inclusive manner. Awareness campaigns must be launched to destigmatize male and transgender victimhood, ensuring that survivors feel safe coming forward. Law enforcement agencies must be trained to handle cases with sensitivity, moving beyond archaic biases that reinforce harmful stereotypes.

If the UK, Canada, and Australia have successfully incorporated gender-neutral frameworks into their sexual violence laws, there is no reason India cannot follow suit. The resistance to these reforms is not based on legal impracticality but on cultural reluctance—a reluctance that must be overcome in the pursuit of real, meaningful justice.

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