

## “GENDER NEUTRALITY IN RAPE LAWS: A CRITICAL ANALYSIS”

**AUTHOR** – SONI, POSTGRADUATE IN CRIMINAL LAWS FROM BPSMV, KHANPUR KALAN, SONEPAT, HARYANA

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### ABSTRACT:

Gender neutrality in criminal law refers to the inclusion and protection of individuals of all genders within the legal framework, without discrimination based on biological sex or gender identity. In India, rape laws continue to follow a gender-specific approach by recognising only women as victims and men as perpetrators. This legal position excludes adult male and transgender victims from the ambit of rape laws, leaving them without effective remedies. Despite constitutional guarantees of equality, dignity and personal liberty under Articles 14 and 21, the Indian criminal justice system has failed to incorporate gender-neutral provisions in rape laws. Even with the introduction of the Bharatiya Nyaya Sanhita, 2023, the legislature retained the traditional definition of rape. In contrast, several jurisdictions across the world have adopted gender-neutral sexual offence laws. This paper critically analyses the historical development, current legal position, judicial interpretations and the urgent need for reform in Indian rape laws, while suggesting concrete recommendations to make them inclusive and constitutionally compliant.

Keywords: Gender neutrality, rape laws, criminal justice, LGBTQIA+, constitutional rights

### Literature review: –

- J.N. Pandey's *Constitutional Law of India* (2020) offers a comprehensive examination of the fundamental rights enshrined under the Indian Constitution. The author critically analyses the scope and interpretation of Articles 14 and 21 through landmark judicial decisions, which is particularly relevant for understanding the constitutional validity of gender-specific criminal laws. This work provides a strong constitutional foundation for examining whether the exclusion of certain genders from rape laws aligns with the principles of equality and dignity.
- Ratan Lal and Dheeraj Lal's commentaries on the Indian Penal Code (2019) and the Bharatiya Nyaya Sanhita (2023) serve as authoritative texts on substantive criminal law in India. These

works systematically explain the statutory provisions relating to sexual offences, including rape, along with relevant judicial interpretations. Their analysis is instrumental in tracing the evolution of rape laws and highlighting the continuance of gender-specific definitions even under the newly enacted criminal legislation.

- Prof. S.N. Mishra's *History of the Criminal Justice System* (2015) provides valuable insights into the development of criminal law and penal policy in India. The author discusses the historical and sociological factors that have influenced criminal legislation over time. This work is particularly useful in understanding why Indian rape laws have traditionally followed a gendered approach and how societal attitudes have shaped legislative responses to sexual offences.

### Methodology: -

This study adopts a doctrinal research methodology, relying on secondary sources such as statutory provisions, judicial decisions, Law Commission reports, textbooks, academic journals, and reliable online legal resources. An analytical approach has been employed to assess constitutional implications, while a comparative method has been used to examine international practices relating to gender-neutral rape laws.

### Introduction

Sexual offences represent grave violations of bodily autonomy and human dignity. Rape, derived from the Latin word *rapio* meaning “to seize,” denotes non-consensual sexual intercourse achieved through force, coercion, manipulation or abuse of power. It is widely acknowledged as one of the most traumatic crimes due to its long-lasting psychological, emotional and social consequences. While rape has traditionally been viewed as a crime against women, contemporary understanding recognises that sexual violence can be inflicted upon individuals of any gender.

Indian society continues to perceive rape through a gendered lens, largely influenced by patriarchal norms. This perception has shaped criminal legislation, resulting in rape laws that protect only women. Such an approach ignores the lived experiences of male and transgender victims, who often face social stigma, underreporting and legal invisibility. The principle of equality before law demands that legal protection must be extended to all individuals who suffer similar harm, regardless of gender.

### HISTORICAL DEVELOPMENT OF RAPE LAWS IN INDIA

The offence of rape was codified under Section 375 of the Indian Penal Code, 1860. At the time of enactment, the age of consent was fixed at ten years, reflecting colonial and social attitudes of that period. Over time, legislative amendments

raised the age of consent to twelve years in 1891, fourteen years in 1925, sixteen years in 1940 and finally eighteen years in 2013.

A major turning point in the development of rape jurisprudence was the Mathura rape case (*Tukaram v. State of Maharashtra*, 1979). The acquittal of the accused led to widespread criticism and highlighted serious deficiencies in rape laws. Consequently, the Criminal Law (Amendment) Act, 1983 introduced provisions relating to custodial rape and shifted the burden of proof in certain cases.

Further reforms followed the 2012 Nirbhaya incident, resulting in the Criminal Law (Amendment) Act, 2013. However, despite these changes, the gender-specific nature of rape laws remained unchanged. With the enactment of the Bharatiya Nyaya Sanhita, 2023, rape provisions were relocated to Sections 63 to 71, but the definition continues to restrict victims to women.

### CURRENT LEGAL POSITION UNDER BNS, 2023

Section 63 of the Bharatiya Nyaya Sanhita defines rape as an offence committed by a man against a woman. This definition mirrors the earlier IPC provision and excludes adult male and transgender victims. While male and female children are protected under the Protection of Children from Sexual Offences Act, 2012, no similar protection exists for adult males or transgender persons.

The repeal of Section 377, which previously addressed certain non-consensual acts, has further widened this legal vacuum. As a result, adult male and transgender victims of penetrative sexual assault have no effective remedy under criminal law, raising serious constitutional concerns.

### CONSTITUTIONAL PERSPECTIVE

Article 14 of the Constitution guarantees equality before law and equal protection of laws. Discriminating between victims solely on the basis of gender violates this principle. Article 21 guarantees the right to life and personal liberty, which includes the right to live with

dignity. Sexual assault is a direct assault on dignity, irrespective of the victim's gender.

In *Maneka Gandhi v. Union of India*, the Supreme Court expanded the scope of Article 21 to include substantive due process and dignity. This interpretation strengthens the argument that exclusion of certain victims from rape laws is unconstitutional.

### JUDICIAL INTERPRETATIONS ON GENDER NEUTRALITY

1. The issue of gender neutrality in rape laws was first judicially acknowledged in *Smt. Sudesh Jhaku v. K.C.J.* (1996), decided by the Delhi High Court. In this case, Justice Jaspal Singh observed that the trauma suffered by male victims of sexual assault is no different from that experienced by female victims. The Court emphasised that the absence of legal recognition for male victims creates an unequal and unjust legal framework, thereby highlighting the necessity for gender-neutral rape laws.
2. In *Anuj Garg v. Hotel Association of India* (2008), the Supreme Court examined the constitutionality of gender-based classifications in law. The Court held that protective discrimination based on stereotypical assumptions about gender roles is impermissible. Although the case did not directly concern rape laws, it strongly reinforced the principle that legislation should not be founded on rigid gender binaries, as such an approach undermines the concept of gender equality and neutrality.
3. The Supreme Court in *Priya Patel v. State of Madhya Pradesh* (2006) reaffirmed the prevailing legal position that, under Indian law, only a man can be prosecuted for the offence of rape. The Court clarified that women cannot be held liable for committing rape under the existing statutory framework, thereby exposing the inherent gender bias embedded within rape laws.
4. In *Sakshi v. Union of India* (1997), the Supreme Court acknowledged the limitations of the existing legal framework in addressing sexual offences against male and transgender victims. The Court referred the matter to the Law Commission of India to examine the possibility of introducing gender-neutral provisions. Despite this reference, no substantial legislative reform was undertaken to address these concerns.
5. The landmark judgment in *Maneka Gandhi v. Union of India* (1978) significantly expanded the interpretation of Article 21 of the Constitution. The Supreme Court held that the right to life includes the right to live with human dignity and not merely physical existence. This interpretation strengthens the argument that denial of legal protection against sexual violence on the basis of gender violates the fundamental right to dignity.
6. In *National Legal Services Authority v. Union of India* (2014), the Supreme Court formally recognised transgender persons as a third gender and affirmed their entitlement to fundamental rights under the Constitution. The judgment underscored the obligation of the State to ensure equality and dignity for transgender individuals, thereby reinforcing the demand for their inclusion within gender-neutral rape laws.
7. In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalised consensual same-sex relations by striking down parts of Section 377 of the IPC. While the judgment advanced sexual autonomy and privacy, it did not directly address the issue of sexual assault between individuals of the same gender. This omission highlights the continuing reluctance of Indian criminal law to fully

embrace gender-neutral approaches to sexual offences.

Comparative judicial approaches in countries such as the United Kingdom under the Sexual Offences Act, 2003 demonstrate that gender-neutral rape laws are both feasible and effective.

### NEED FOR GENDER-NEUTRAL RAPE LAWS

Gender-neutral rape laws acknowledge that sexual violence is not confined to a single gender. International human rights instruments, including the Universal Declaration of Human Rights and ICCPR, emphasise equality and dignity. Many countries, including the UK, USA, Australia and Canada, have adopted inclusive definitions of sexual offences.

In India, the absence of such laws perpetuates underreporting and denies justice to a significant section of victims. Social stigma and lack of legal recognition further marginalise male and transgender survivors.

### Need for reforms

It was expected from BNS that it will contain gender neutral rape laws. But BNS should be criticised for not providing gender neutral laws. If a male child is below 18 years of age and rape committed to him then it will deal under POCSO act, which means for child male victim you can reach the accused through another legislation that is POCSO. But POCSO doesn't apply when victim are more than 18 years of age in case of male. This question is of utmost important that now what to do when the victim is above 18 years of age? Because now section 377 of IPC is also abolished from BNS that covered the unnatural offences under it. Therefore, while introducing the new criminal laws we again lost the opportunity and made it completely a awakened idea where there is no grievance ventilated by person who is victim of that kind of crime. Because of lack of proper laws victims who are male and LGBTQIA+ community are in vulnerable situation.

### Recommendations for Gender-Neutral Rape Laws under the Bharatiya Nyaya Sanhita

- ❖ Firstly, the definition of rape under Section 63 of the Bharatiya Nyaya Sanhita presently recognises only women as victims of the offence. To ensure inclusivity and equality, the term “woman” should be replaced with gender-neutral expressions such as “person” or “human being.” Such an amendment would extend legal protection to all individuals who suffer sexual violence, irrespective of their gender identity.
- ❖ Secondly, Section 63 limits the category of offenders by identifying only males as perpetrators of rape. This restrictive approach should be revised by adopting gender-neutral terminology for the accused as well. Removing gender-based distinctions in identifying offenders would reflect the reality that sexual violence can be committed by individuals of any gender.
- ❖ Thirdly, the provision dealing with gang rape under Section 70 of the Bharatiya Nyaya Sanhita is confined exclusively to offences committed against women. This section should be amended to eliminate gender-specific language so that victims belonging to all genders, including men and members of the LGBTQIA+ community, receive equal protection and recognition under the law.
- ❖ Further, Section 72, which governs the protection of the identity of rape victims, should be broadened to cover victims of all genders. Ensuring confidentiality for every survivor of sexual assault is essential to preserve dignity, encourage reporting and prevent secondary victimisation.

In light of the above, comprehensive amendments should be introduced across all rape-related provisions under the Bharatiya Nyaya Sanhita, particularly Sections 63 to 71. Such reforms are necessary to transform the existing framework into a truly gender-neutral legal regime that aligns with constitutional principles of equality and human dignity.

### Conclusion: -

Indian rape laws, despite multiple reforms, continue to lack gender neutrality. Sexual violence affects individuals across gender

identities, and the law must reflect this reality. Excluding male and transgender victims from rape laws violates constitutional principles of equality and dignity. To build a just and inclusive criminal justice system, it is imperative to adopt gender-neutral rape laws through comprehensive legislative reform.

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