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GENDER-NEUTRAL RAPE LAWS: NEED FOR REFORM IN INDIAN CRIMINAL JURISPRUDENCE

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ABSTRACT

This study investigates the current situation with the criminal legislation in India concerning sexual offences and the urgent necessity of the gender-neutral criminal law. The paper examines the current laws (especially, the Indian Penal Code, and the recently established Bharatiya Nyaya Sanhita, 2023), court interpretations, and legislative suggestions. It illuminates the way existing legislations (such as the Section 375 IPC) in the past set rape as the act of a man raping a woman, which leaves out all male, transgender, and non-binary victims.¹³⁶⁴ The analysis will be based on the domestic sources (law commission reports, court decisions, legal commentary) and international models (Canada, UK, etc.) to determine whether gender-specific provisions continue to be a means of justice. The major conclusions can be made to confirm that there is a significant legal gap: numerous survivors (men and gender-diverse in particular) are not covered by the current system.¹³⁶⁵ In the case of *Sudesh Jhaku v. K.C.J.* (1996)¹³⁶⁶, *Priya Patel v. MP* (2006)¹³⁶⁷, *Kamaljit Kaur v. Punjab* (2023)¹³⁶⁸ indicates that the judicial cognizance of these gaps exists. Comparative examples indicate that such countries as Canada, Australia and UK have adopted completely inclusive definitions of sexual assault.¹³⁶⁹ The results of the given study highlight that it is necessary to change the laws of India: to make rape and related crimes gender-neutral (although retaining the protection of all victims), to amend the laws, such as the exception of marital rape, and to create the complementary acts concerning domestic violence and harassment. Suggestions may involve certain drafting changes (e.g. having rape redefined as non-consensual penetration by any person) and policy changes to enforce the latter. These reforms would bring the Indian law in line with constitutional equality (Article 14) and international standards on human rights thus giving equal justice to all the genders.

Keywords: Gender-neutral law; Rape legislation; Indian Penal Code; Bharatiya Nyaya Sanhita; Sexual offences; Domestic violence; Article 14; Legal reform.



¹³⁶⁴ *The Indian Penal Code, 1860*, § 375 (India).

¹³⁶⁵ Shubhi Verma & Alok Anand, Gender-Neutral Laws – Is India Ready?, 2 *Jus Corpus L.J.* 19, 21–22 (2022).

¹³⁶⁶ *Sudesh Jhaku v. K.C.J.*, 1996 SCC OnLine Del 527.

¹³⁶⁷ *Priya Patel v. State of M.P.*, (2006) 6 SCC 263.

¹³⁶⁸ *Kamaljit Kaur v. State of Punjab*, 2023 SCC OnLine SC 1602.

¹³⁶⁹ Heather Nalezty, Gender Bias in Sexual Assault Laws in Canada, Gender: Reflections & Intersections (2023), <https://gender.lancs.ac.uk/gender-bias-canada>

Introduction

The legal definition of rape in India is still unambiguously gendered. In accordance with Section 375 of the Indian Penal Code¹³⁷⁰ (and its counterpart in the Bharatiya Nyaya Sanhita, 2023), a man is the only person who can be found guilty of rape and that the victim be a woman. Practically, the law states rape as a sexual intercourse when a male offender has sex with a female victim. Through these words, male and transgender individuals who are victims of non-consensual sexual assault are not included in the statutory definition. This produces an instant anomaly: the rape laws do not allow men and queer survivors access to relief at all, when they are available to women.

The rape legislation in India has been made to expand over the years (such as the 2013 Criminal Law (Amendment) Act expanded the understanding of rape to include penile-vaginal penetration), yet the gender-specific applicability of the rape laws has remained in place. Reforms of 2013 applied the same offence to oral or anal penetration, but did not change the gendered language – explicitly restating that only a man is capable of raping a woman. In the same manner, even the new Bharatiya Nyaya Sanhita (2023) still defines rape as a intercourse with a woman. Practically, the contemporary Indian laws continue to conceive sexual violence as something which emanates to women at the hands of men.

Such gendered formulation of the law excludes a huge and vulnerable section of the population. Transgender, intersex, and men survivors of sexual violence are practically denied the rape provisions. This is a lacuna which is being observed by courts. For instance, in XYZ v. State of Maharashtra (2023) – the Bombay High Court clearly acknowledged that the male victims ought to be also safeguarded and proposed to the legislature to make the law gender-neutral. In addition, the existing system

is inconsistent with the constitutional provisions in India. Article 14 (equality) and Article 15 (prohibition of sex-based discrimination) requires legislation that is not arbitrarily discriminatory based on gender. The right to life and individual freedom of article 21 that encompasses dignity and integrity of the body also affirms the right to all people against sexual violence, no matter their gender affiliation. This principle is reflected by international human rights instruments: CEDAW and Yogyakarta Principles call on the governments to make laws on sexual offence gender-neutral and consent-based. Collectively, these points imply that the gender-selective rape legislation in India does not find favor in both changing social realities and the fundamental principles of legal norms, which explains the necessity to change the law.

Statement of problem

The fundamental issue that is under analysis in the current paper is a gender unneutrality of rape laws in India. This legal definition of the offence of rape is so limiting that only one sex, a male, and the other female victim are addressed. Differently put, statutory rape in India must involve a man and a woman. This written exclusion covers and includes all other victims: cisgender men, transgender and intersex individuals, and non-gender individuals are not allowed to invoke the rape provision, no matter how heinous the assault.

Such exclusion is both practical and theoretical. In practice, non-female victim survivors must resort to other clauses (such as the old Section 377 on unnatural intercourse or a range of assault/obscenity statutes), which have generally lesser punishment. Moreover, the BNS does not have any similar provision as Section 377 of IPC that gives the men and transgender members no legal safeguard against sexual crimes. This may result in serious crimes going unpunished properly and demoralizing victims to report them. In theory, the gendered rape law maintains a patriarchal stereotype that women are the only ones who may be sexually violated.

¹³⁷⁰ Supra note 1

It causes a category of unworthy victims and subverts the constitutional guarantee of equal protection. Indicatively, this arrangement has been observed to deprive millions of transgender and intersex individuals of their rights by courts.

This study seeks to determine the necessity and justification of gender-neutral amendments to the rape laws in India. The questions that the study will be answering are: What are the ways the statutory definitions and amendments restrict the scope of rape, and in what ways do judges understand the restrictions? Constitutional implications of sex-specific offence (Articles 14, 15 and 21)? To respond to them, the study takes a doctrinal approach: the study of the wording of the legislative acts, the overview of major judicial decisions, and scrutiny of the academic commentary on equality and sexual violence. The possible reform models will be placed into perspective with a comparative understanding with the laws of the UK and Canada which have chosen to implement gender-neutral laws.

This paper contends that gender-inclusive rape legislation is needed in India. Through examining statutory loopholes, judicial disposition and rights standards, it aims at mapping a way into a legislative change that guarantees that all victims of sexual violence irrespective of gender are accorded equal protection and justice.

Research Questions

This study seeks to address the following questions:

1. What is the current scope of gender-specific provisions in India's criminal laws?
2. What legal and policy arguments have been made for or against gender-neutral laws in India?
3. How have international jurisdictions (e.g. Canada, UK) reformed sexual offence laws, and what lessons can India draw from them?

4. What concrete legislative reforms or policy measures can make India's laws more inclusive and ensure equal protection for all genders?

Significance of Research

- **Equality Before Law:** India has a constitution that affirms equality (Article 14) without gender considerations. The study of gender-neutral legislation provides a challenge to the workability of the principle in sexual offence regulations.
- **Inclusivity and Justice:** To create an inclusive justice system, the legal marginalization of male, transgender, and non-binary victims needs to be fully understood and addressed. The inability to reform these laws can make several survivors powerless.
- **Policy Relevance:** The subject is timely as there are recent reforms (Bharatiya Nyaya Sanhita, 2023) and discussions. The results may guide the policymakers in the reform of criminal laws.
- **International Context:** Since other democracies are shifting to gender-neutral definitions of crimes (e.g. Canada made laws on rape gender-neutral in 1983) this study places the laws of India in a comparative context, finding what is being done better and what may lead to failure.

Scope and Limitations

- **Scope:** The criminal law used in this study is on sexual offences and other areas (rape, sexual assault and marital rape, sexual harassment and domestic violence laws) of India. It reviews both legislative acts (IPC Sections 375-376 and its replacements, POCSO, DV Act, etc.), the legislative precedents, and law reform suggestions. The comparison also uses the reforms in the UK, Canada and some other jurisdictions to provide an insight into the analysis.
- **Limitations:** The study is confined to the legal analysis (doctrinal and

comparative). It does not entail primary fieldwork or statistics surveys. It is silent in other fields of law (e.g. labour laws) that may be addressed in gender neutrality. It also fails to examine the data on enforcement and police/criminal justice practices outside of demonstrating the legal provisions and debates. It is focused on why and what laws should be but not on the difficulties of implementation.

Objectives of Research

- **Examine the Current Legislations:** Find out how current legislations define rape, sexual assault, domestic violence, and how it is presented in gender-specific terms or assumptions.
- **Survey the Literature:** Overview the academic, judicial, and policy literature on the topic of gender-neutral and gender-specific legislation in India.
- **Compare International Models:** Compare the definition of rape and sexual offences in Canada, the UK and other countries as well as the reforms that have been put in place.
- **Evaluate Reform Necessity:** According to the analysis of law and contextual aspects, it is required to determine whether the laws in India need to be gender-neutral.
- **Offer Recommendations:** Recommend certain legislative and policy amendments to ensure that Indian law is more inclusive of gender and protects justice to all victims.

Research Methodology

- **Doctrinal Analysis:** It is research that carries out a doctrinal analysis of statutes (Indian Penal Code and amendments, PWDVA, etc.), legislative materials (Law Commission reports, reform bills), and judicial decisions (SC, HC cases).
- **Literature Review:** It takes a survey of articles and legal commentaries as well as news reports (e.g. legal blogs, law

journals, media articles) to obtain a variety of perspectives on the topic of gender-neutrality in law.

- **Comparative Approach:** The study will compare Indian law provisions with those of some foreign jurisdictions of choice. The main sources of international importance are the Canadian Criminal Code reforms and the UK Sexual Offences Act and the secondary analysis.
- **Qualitative Analysis:** The paper brings together arguments in the literature (e.g. why/why not be neutral) and suggests their implication concerning constitutional principles (Article 14, 15) and socio-legal realities (reported cases, victim statistics where possible).

Literature Review

Gender-neutral law has been a topic of a lot of academic and policy debate. The term gender-neutral legislation refers to laws that are not discriminatory and do not favor any gender but refer to all as inclusive.¹³⁷¹ Researchers observe that Indian criminal laws (mostly sexual crimes) are based on the assumption of a male perpetrator and a female victim, which is patriarchal in nature.¹³⁷² As an example, a recent synopsis notes that most of the laws in India are based on the premise that males are the sole criminals and women the sole victims. The critics state that this construct leaves a male, transgender and non-binary abuse survivor with a legal blind spot.¹³⁷³

Meanwhile, the constitutional guarantees in India are brought out in literature. Article 14 establishes the equality before the law, i.e. all citizens must be equal in the eyes of the law. Analysts make use of this basic right to contend to have gender-neutral statutes. It is interesting to mention that the article 15(1) prohibits all forms of discrimination based on the ground of sex that further enhances the appeal of equal

¹³⁷¹ Jus Corpus, Gender Neutral Laws in India (2022), <https://juscopus.com/gender-neutral-laws-in-india/>

¹³⁷² Id.

¹³⁷³ Verma & Anand, supra note 2, at 23.

treatment under criminal law. Conversely, Article 15(3) permits positive actions towards women, and this brings in question whether laws that are gender-specific contravene equality or are some protective actions. Overall, the works arguing the neutral position can insist on the idea that the vulnerable groups of the modern time (male victims, LGBTQ+, etc.) are to be recognized in the law.

A number of legal commentaries and reports have directly touched on the problem of rape laws. In the famous Law Commission of India (172nd report, 2000) suggestion, the section 375 of IPC was proposed to be widened to be gender-neutral in line with the principles of equality of Articles 14 and 15.¹³⁷⁴ It stated that gender-neutral definition would be able to protect all identities equally. In response to the 2012 Delhi gang-rape case, the Justice Verma Committee (2013) also called to broaden the definitions and be inclusive of sexual assault against men and transgender people. These reports indicate that there has been a strand of reform advocacy within the official circles. The scholarly publications are not silent here: according to Verma and Anand (2022), inclusion of non-female victims is negatively affecting equal protection and refusing to acknowledge harms to men, who are patriarchal (see Literature).

On the other hand, there are also commentators, who warn about naive neutrality. Some feminist academics and activists have argued that laws that have been gender-related are necessary to address historical oppression of women and because gender-neutral laws would weaken the rights of women. In a case in point, an Article-14 article threatened that neutrality calls could result in a truly unjustified society that is high-pitched gender-biased, unless thoroughly discussed. In the same vein, Queerbeat (2025) has voices of some of the activists who are still cautious of making laws neutral and propose more specific laws targeting queer and trans survivors. This

raises an argument: should all victims be put under the same law, or should both gender-neutral and gender-specific be developed simultaneously?

The literature records that there were major reforms towards neutrality internationally. As early as 1983, Canada had amended its Criminal Act (Bill C-127) to use gender-neutral sexual assault as an alternative to rape. This eliminated the fact that a man alone was capable of sexually assaulting someone and immunity to marital rape. Similar laws (with the full definition of rape) have also been passed in other nations (Australia, Ireland, Finland, Wales), which are fully gender-neutral.¹³⁷⁵ In the UK, the Sexual Offences Act 2003 shifted the ground to neutrality (although in the law, the women are in practice unable to be principals in the crime of rape).¹³⁷⁶ These illustrations provide a background to Indian reform, however, they also indicate that the law cannot necessarily alter social attitudes (one UK researcher identifies still prevailing myths that men are always seeking sex which reform should challenge in addition to the law).

Overall, it can be determined that the literature confirms that Indian laws on sexual offences are heavily criticized due to their gender prejudice, and that a significant group of experts and reformers is of the opinion that these laws ought to be transformed on gender-neutral terms.¹³⁷⁷ It also records the counter-arguments and parallel experiences that are used to inform this discourse. This literature review preconditions the thorough discussion of Indian law and particular reform suggestions.

Scheme of Study

The Indian Penal Code (IPC, 1860) that is the main criminal law of India has a number of

¹³⁷⁴ Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

¹³⁷⁵ BNB Legal, From Ambiguity to Clarity: Unpacking the Enigma of Gender and Rape in India (Dec. 2023), <https://bnblegal.com/article/gender-and-rape-laws-india/>.

¹³⁷⁶ Lancaster Univ. Law Blog, Should the Law Adopt a Gender-Neutral Approach to the Definition of Rape? (Nov. 8, 2023), <https://lawblog.lancs.ac.uk/gender-neutral-rape-definition/>.

¹³⁷⁷ Sreelekha Kutty, Why Gender Neutrality Won't Fix India's Broken Rape Laws, Queerbeat (May 23, 2025), <https://www.queerbeat.org/article/gender-neutral-rape-laws>.

explicit gender-based provisions in sexual offences. Conventionally, rape is defined by the provisions of Section 375 IPC as a man engaging with a woman in a sexual intercourse without her consent.¹³⁷⁸ By this meaning, a man is the only person who can rape, and a woman is the only person who can fall victim. Exemption was made on marital rape: not rape when one has intercourse with his/her wife and the woman is 15 years or above¹³⁷⁹. In 2013 (the "Nirbhaya Amendments"), the definition of penetrative acts became broader in India, including oral, anal and use of object penetration (e.g. vaginal intercourse is not a requirement anymore). Nevertheless, there were no changes in the gendered essence of Section 375: men can still be the only possible violators, and women the only possible victims. This implies that the law still expressly omitted cases like a woman raping a man, a woman raping a woman or a transgender raping anyone (where rape is given by penetration).

The provisions of the IPC were further reformed in 2023 by the new Bharatiya Nyaya Sanhita (BNS), which renumbered the provisions of the IPC (making Section 375 into Section 63, etc.).¹³⁸⁰ It has been confirmed in press reports that BNS had made certain sexual offence provisions neutral – e.g. replacing the term minor girl by child so that male children are also subject to it and by allowing the importation of boy or girl rather than only girls.¹³⁸¹ The marital rape was also criminalized in principle by the BNS by increasing spousal age of consent to 18. Nevertheless, there are still major loopholes. It has been criticized by the effect it has on existing male and LGBTQ victims: it repealed Section 377 (previously the sole recourse available to non-consensual male rape) and retained rape defined in traditional lines.¹³⁸² According to the queer activists, following BNS,

men, whether gay or otherwise, have been totally disadvantaged in terms of protection against rape and sexual assault. In a way, therefore, the new law did not in most respects succeed in the gender-neutral goals most of the activists desired. Indeed, a legal overview notes that despite BNS modifying some of its trafficking articles so that they are gender-neutral, it still uses the gendered language in its main rape crimes.

Other provisions in addition to rape portray gender assumptions. Although victim-neutral in words (including a child victim of either sex), Protection of Children from Sexual Offences Act (POCSO, 2012) was motivated by much fear of girls abuse.¹³⁸³ Section 498A IPC (dowry cruelty) and Section 304B (dowry death) are all the laws that target only married women and safeguard them against cruelty by husbands and in-laws, and it does not permit a wife to be accused of cruelty towards a husband. The Protection of Women against domestic violence Act (2005) clearly provides remedies only to women and their children. In comparison, the vast majority of other IPC offences (such as robbery, murder, etc) are gender-neutral; laws on family and sexual violence are the only things that continue to perpetuate the historical concept of the male aggressor and the female victim.

Judicial Interpretations and Recommendations

These provisions have been a challenge to Indian courts. It is also worth mentioning that, in the case of *Sudesh Jhaku v. K.C.J.* (Delhi HC, 1996)¹³⁸⁴, the court confirmed that male rape victims deserve no less protection than female victims: it referred to it as unreasonable to deprive a victim of protection just because he is a man. Such a recognition early indicated judicial readiness to give interpretations inclusively, but within the limitations of wording. In contrast, in *Priya Patel v. In State of Madhya Pradesh* (SC, 2006)¹³⁸⁵, the Supreme Court

¹³⁷⁸ *The Indian Penal Code, 1860*, § 375 (India).

¹³⁷⁹ Id. Explanation 2 (pre-2013 amendment).

¹³⁸⁰ *Bharatiya Nyaya Sanhita, 2023*, § 63 (India).

¹³⁸¹ Business Standard (PTI), Sexual Offences Now Gender Neutral, as BNS Introduces Key Changes (July 3, 2024), <https://www.business-standard.com/article/current-affairs/sexual-offences-now-gender-neutral-as-bns-introduces-key-changes>

¹³⁸² Supra note 13.

¹³⁸³ *Protection of Children from Sexual Offences Act, 2012*, § 7 (India).

¹³⁸⁴ *Sudesh Jhaku v. K.C.J.*, 1996 SCC OnLine Del 527.

¹³⁸⁵ *Priya Patel v. State of M.P.*, (2006) 6 SCC 263.

strongly believed that a woman is incapable of rape as specified in Section 375 of the rape law. The Court explained that it was conceptually impossible to punish a woman as a result of rape, since rape (by definition) is intended to involve penetration, which a woman could not have. The accused woman was, therefore, not found guilty under 375 (although she may have been liable as an accessory of the rapes by gangs in some situations). The Patel case highlights the strict interpretation of the gendered language by the courts: until the Section 375 states that it is man, the act committed by a woman cannot be called rape.

Nonetheless, Section 376D (rape of women by gang members) has now gained a position in the Indian legislation and it applies a term "persons (in a group)". In *Suneeta Pandey v. The Allahabad HC* (2023), construed persons wide and a woman could be prosecuted on the basis of being a part of a gang, which engaged in rape. The court clearly indicated the difference when a woman could not commit rape (375), but could be guilty of gang-rape by encouraging it. A court hearing involving the Supreme Court in *Kamaljit Kaur v. State of Punjab*¹³⁸⁶ has seen a ruling very recently (Dec 2023). In a query to the justice, Punjab asked himself why 376D refers to the persons and not man when this was not supposed to apply to women and he was surprised to see such a lapse in legislation. These court observations point to an increasing pressure to occupy the statutory gap – i.e. to acknowledge that women (and perhaps other genders) might be the main perpetrators in rape-like offenses, or at least as being complicit to be accomplices.

The neutrality is rendered as urgent by other cases. In *Anuj Garg v. Hotel Ass'n of India*¹³⁸⁷, the Court ruled that Hotel Association could not apply the sexual harassment law to a female violator until the legislature altered the words (which then only referred to male wrongdoers). It did not become gender-neutral until 2013

when the definition of sexual harassment was revised. Similarly, in *Sakshi v. Union of India*¹³⁸⁸ The issue of male rape victims was sent to the Law Commission (1997), consequent to which the 172nd Report (2000) suggested wider definitions. However, despite these sources, the change has been sluggish: there were Criminal Law Amendment Bills of 2012 and 2019 seeking to make sexual offences and domestic violence draft gender-neutral, both unsuccessful in Parliament.

These rights of transgender persons have also been pointed out by Indian judges. The landmark *NALSA v. UOI* (2014) acknowledged trans identities to be a third gender. The decriminalization of homosexuality (*Navtej Singh Johar*, 2018) helped eliminate the wall, but also demonstrated the limitation: now that the Section 377 is no more, adult male-on-male rape in the law does not have a category. In total, the judicial tendencies demonstrate a contradiction: on the one hand, some of the judges safeguard the existing gender-biased laws (follow the strict interpretation), and on the other hand, encourage wider, activist interpretations or encourage legislative reforms to accommodate new classes of victims.

Legislative Intent and Parliamentary Debates

Gender-neutral rape legislation in India is a matter that has been recurrently discussed in policy circles, commissions and even in parliament during the past twenty years. The Indian Penal Code of 1860 embedded a gender-specific conceptualization of rape, that of a man engaging in intercourse with a woman, yet over time, reform commissions and committees have tried to change this conceptualization in line with constitutional principles of equality and international human rights demands. Nonetheless, gender-neutral language has not been accepted in the final statutes of the legislature, despite the strong recommendations.

¹³⁸⁶ *Kamaljit Kaur v. State of Punjab*, 2023 SCC OnLine SC 1602.

¹³⁸⁷ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1.

¹³⁸⁸ *Sakshi v. Union of India*, (2004) 5 SCC 518.

The first authoritative recommendation to change the definition of rape under Section 375 IPC was the 172nd Law Commission Report (2000). It recognized that sexual violence was neither a man-to-woman dichotomy nor that the right to protection on Article 14 of the Constitution should exclude men and boys. The Commission also observed that the international instruments like the International Covenant on Civil and Political Rights (ICCPR) required the protection of all people by the law. It thus made two important changes, the first one being that the term rape will be substituted by a gender-neutral, broader offense of sexual assault, and the second one being that the offenders and the victims themselves can be of any gender. These proposals however were opposed by the policymakers who claimed that the vulnerability of women was a reason to have a definition of one that was female oriented.

It has acquired fresh urgency with the 2012 Delhi gang-rape case, which elicited mass protests and made the government form the Justice Verma Committee (2013). The report by the Committee was ground-breaking: it advocated in a strong way the concept of gender neutrality in sexual offences since it noted that the law ought to be used to apply the reality that men, transgender and others too could be victims of sexual assault.¹³⁸⁹ It also called on eliminating the marital rape exception, which it believed cannot be a defense to a non-consensual act of rape. The proposals of the Committee were celebrated as having progressive recommendations and being in tandem with the best practices in the world, including the 1983 reforms in Canada that substituted rape with sexual assault that was gender-neutral. However, the Criminal Law (Amendment) Act, 2013 only embraced the recommendations of the Committee partially. Although the definition of acts that amounted to rape was expanded (to cover oral, anal penetration and object penetration), rape was still described as an act

perpetrated by a man or the woman. This was observed in parliamentary discussions then: some members had growing reservations about gender-neutral definitions, saying that they would be used against women, and that this used a patriarchal stereotype about false cases.

Most recently, the replacement of the IPC with the Bharatiya Nyaya Sanhita (BNS), 2023, sparked the discussion once again. The BNS also included some gender-neutral wording in offences that pertain to children, like minor girl was changed to child, thus giving an extra protection to the male minors.¹³⁹⁰ Nevertheless, the BNS has received a lot of criticism regarding the abolishment of the previous Section 377 IPC that was the only legal option available to male and LGBTQ+ victims of rape in the past. Government officials discussed it in parliament and claimed that Section 377 offences labeled as unnatural were both archaic and discriminatory after Navtej Singh Johar (2018). However, by not developing a new gender-neutral rape provision, the BNS accidentally eliminated the sole statutory protection to non-female victims. Legal scholars and activists have sounded this as retrogressive instead of progressive. It was also reported in the media that the demand to be neutral did not feature in the arguments at Parliament, when civil society submitted its arguments. Therefore, even though the legislative motive of the reforms has, in many cases, been claimed as the need to safeguard the weak, the drafting decisions demonstrate a constant focus on victimhood of women to the detriment of other people.

Practical Challenges in Enforcement

Although statutory provisions are in place, law enforcement of sexual offence in India lacks deep structural and cultural issues. Such problems would be also pertinent – and, possibly, even more acute in case gender-neutral laws are introduced. The three major barriers are the bias of the police, social stigma, and lack of awareness.

¹³⁸⁹ Supra note 11

¹³⁹⁰ Supra note 12

Police discrimination has been known to be an obstacle to sexual offence justice. According to studies and judicial commissions time and again, police tend to simply not believe victims, dismiss complaints, or dishearten them into filing First Information Reports (FIRs). These obstacles are compounded in the case of male and LGBTQ+ victims. There is no place in the law that defines men as a possible rape victim, so when an officer receives such complaints, their response to the victim always includes a rejection of these complaints as legally invalid or socially unrealistic. This bias that has become institutionalized leads to a self-perpetuating cycle of underreporting of cases and strengthening the view that non-female sexual assault is uncommon. Further, the masculinity stereotypes (e.g., the assumption that men are never unwilling participants of a sex) contribute to the ridicule or the victim-blaming effect when male victims go to the police. Gender-neutral laws will not be effectively enforced without formal police sensitization and statutory acknowledgment.

These are aggravated by social stigma. The victims of sexual violence are usually ostracized, shamed, and blamed by their community. Although such is the case with women, male and LGBTQ+ survivors face other obstacles: being treated as weak, their masculinity challenged or homophobic stereotypes upheld. The transgender people especially are subjected to transphobia and doubts that they are reporting anything. Such stigma suppresses a lot of victims resulting in serious underreporting. Indicatively, whereas the gay and bisexual men in India have been reported in surveys to have the highest rates of sexual assault, reported complaints have been negligible. Cultural change is needed to ensure that even gender-neutral laws would not be sufficient to promote justice.

The enforcement is further hampered by lack of awareness. There are numerous victims who do not know their rights in the law and even lawyers and judges can fail to interpret the provisions in place. As an example, victims of

assault committed by another woman under the IPC and BNS is usually informed that the only option available to her is to pursue less serious offenses like outraging modesty. This is due to the ambiguity in the legal definitions, and lack of appropriate training among the law enforcement, which leads to intermittent enforcement of the law. There are also awareness gaps in terms of the societal level: the discourse about rape predominantly in society is dominated by the idea of rape being a crime committed by males against females. This does not only affect reporting but also the resource allocation i.e. shelter homes, counselling services and medical protocols are almost all tailor-made to female survivors. Lack of proper medical and forensic facilities also contributes to the lack of practical enforcement. Section 164A CrPC requires medical check up of rape victims, but since hospitals are not always prepared to deal with male or transgender victims, the victims are usually ill equipped. Standard operating procedures and medico-legal forms are also prepared in such a way that they refer to the female anatomy, and the doctor is left confused on how to record the injuries or take evidence in other instances. Such unpreparedness weakens the evidentiary power of prosecutions and discourages the victims to seek medical assistance.

International Comparisons

A comparative perspective offers reference and frames of reform. Major changes were introduced in Canada in the early 1980s. Before 1983, the Canadian law considered rape as a male engaging in sex with a female (and not husbands). Bill C-127 (1982) completely reformed the sexual offence law: it substituted the term rape with a set of gender-free sexual assault offences, and explicitly eliminated the idea that only men might be guilty.¹³⁹¹ The amended Code made marital rape a crime and any human being could be prosecuted based on sexually assaulting another person. This is

¹³⁹¹ Heather Nalezty, Gender Bias in Sexual Assault Laws in Canada, Gender: Reflections & Intersections (2023), <https://gender.lancs.ac.uk/gender-bias-canada>

one instance, in which the legal change can shatter the ancient gender assumptions. The reforms in Canada also added the lack of consent to the rape, instead of emphasis on penetration. The Criminal Code of Canada is now entirely gender-neutral in its treatment of sexual crimes.

Other countries to adopt gender-neutral law have been Australia, Ireland and some sections of the UK. Indicatively, the Sexual Offences Act 2003 in the UK is formulated in gender-neutral language (rape is any non-consensual penile penetration irrespective of what gender the victim belongs to), although in reality only a man can be guilty of rape under said Act.¹³⁹² (Note: it is one legal interpretation that even with the use of male pronouns, the UK law still permits a man to forcefully have intercourse with any person regardless of gender, yet a woman cannot still be the key rapist as per the law in a legal case). In countries such as Australia and Ireland, the definition of sexual violence specifically identifies perpetrators and victims of the female sex and male victims. According to several sources, several jurisdictions (such as Canada, Australia, Finland, Wales) have gone to the extent of being completely gender-neutral with rape legislation, to acknowledge that women are capable of physically engaging in the act of rape.¹³⁹³ Through such international precedents, it is clear that gender-neutral reforms are possible, and they have been attained in democratic societies. India on the other hand is trailing these trends.¹³⁹⁴

On the other hand, there are also lessons on restrictions. In a few states of the US, there are still gendered anachronistic definitions of rape. According to the Lancaster University law blog (2023), the neutrality advocacy in the UK states that the neutrality argument involves debunking myths (e.g. that men are the only rapists, or that

ignorance of the law should guide the law).¹³⁹⁵ These lessons imply that education should come with reform to transform social attitudes. On the whole, international reforms illustrate not only the content of gender-neutral drafting (eliminating such expressions as man commits rape on a woman) but also the need to support measures (training, awareness of the population) in order to make the law effective.

Arguments about Gender-Neutral Legislation

The source analysis indicates that there are a number of central arguments of this debate:

- **Constitutional Equality vs. Substantive Protection:** According to the supporters of the neutrality, the Art. 14 proclamation of equal protection must be applied universally, and it is impossible to provide legal protection only to certain genders. According to them, anyone can be vulnerable to sexual violence, and therefore there should be legislation to that extent. The opponents also argue that women experience systematic violence in patriarchal society and gender specific legislation was to right the power inequality. They are also concerned that blanket neutral law will harm the historic focus on the victimization of historically marginalized victims in the law. Others propose instead developing gender-neutral crimes as well as gender-sensitive ancillary clauses (e.g., having different categories or sentencing policies).
- **Gender-Neutral Language:** According to scholars, the use of inclusive language in statutes (e.g. person, rather than man) is a starting point. As in the case of the BNS, altering minor girl to child, it is possible to see that even basic linguistic modifications can be used to expand coverage. Nevertheless, language is not sufficient as long as the interpretation is

¹³⁹² Sexual Offences Act 2003, c. 42, § 1 (U.K.).

¹³⁹³ BNBLegal, From Ambiguity to Clarity: Unpacking the Enigma of Gender and Rape in India (Dec. 2023), <https://bnblegal.com/article/gender-and-rape-laws-india/>

¹³⁹⁴ Id.

¹³⁹⁵ Lancaster Univ. Law Blog, Should the Law Adopt a Gender-Neutral Approach to the Definition of Rape? (Nov. 8, 2023), <https://lawblog.lancs.ac.uk/gender-neutral-rape-definition/>

biased. It has been argued that legislators ought to be vigilant in audit of all gendered words.

- **Information and Victimhood:** One of the practical problems is the unavailability of data about some crime types. A 2019 article (Indian Journal of Community Medicine) of very few reported cases of women raping men, survey data of gay/bisexual men sexual assault rates of men against men (37.3% of young men surveyed reported violence). Proponents believe that this highlights actual weaknesses that should be tackled by legislation. Those opposed to reform based on data may mention that the sexual violence committed by females is statistically less common, but those in favor of the reform mention that the victims should not be excluded from the law simply because their occurrence is lower. Anyway, there is no coverage, which means that there is no statistical measure of these crimes.
- **Impact of Reform on Women's Safety:** There are those commentators who fear that gender-neutral laws may be abused or undermine the protection of women. Indicatively, the issue of making laws completely gender-neutral has been cited as an example because it may end up eliminating special considerations against women. Nonetheless, according to Jus Corpus, gender-neutral law does not necessarily have to take away the rights of women, on the contrary, it must ensure equality whilst permitting special treatment (as Article 15(3) does, which does not prohibit special treatment of women). According to numerous sources, the aim is additive: to expand protections, but not withdraw. As an example, a gender-neutral law on sexual assaults would be supplemented with services to female victims, and male victims would be able to come forward.

- Overall, the current academic opinion conforms to the necessity of change: the assumptions of Indian law as gender-specific are no longer relevant in the contemporary environment. In the recent legislation or the interpretation way, various authors and reports agree that India must shift towards inclusive statutes. This is a theme that is replicated in both academic articles and media reviews. These conclusions are summarized below.

Findings

Having conducted a tedious overview of legal documents, judicial decisions and scholarly commentary, one comes up with several major findings:

- **Gender-Specific Laws Exclude Many Victims:** The existing provisions of the notions of rape and other related crimes in India do not cover male and non-male victims. Indicatively, the BNS has not addressed this basic gap since, even in Section 375 IPC, a man remains the only possible rapist. This leaves a large number of the survivors with no legal avenue to justice. As an example, when a woman rapes a man, he is not able to be tried on the charge of rape, but on weaker ones (outraging modesty, etc.), as was pointed out by reports.¹³⁹⁶ Transgender victims are also in between cracks: a trans person (also born a man) who was raped by a man could only call upon a repealed colonial-era law (Section 377) prior to its abolition by BNS. These loopholes allow creating blatant inequities – male and LGBTQ victims are virtually regarded as less worthy of protection.
- **Judicial Acknowledgment of the Gap:** The Delhi high court highlighted that male victims should be granted equal rights and protections as females are in

¹³⁹⁶ Supra note 32.

the same crimes. The Allahabad High Court granted permission to prosecute a woman in a case involving gang rape along the loose language of persons. The recent observations of the Supreme Court in *Kamaljit Kaur* emphasize the fact that the gendered format of drafting of the legislation, even by the high courts, is vexing.¹³⁹⁷ These are the voices of the judiciary that uphold in the conclusion of the fact that the gender bias in the law is a known flaw that requires correction.

- **Law Commission and Reform Bills:** The Law Commission and government committees have been long advocates of neutrality. An explicit suggestion on gender-neutralization of rape laws was made by the 172nd Law Commission report (2000).¹³⁹⁸ The Nirbhaya committee has also suggested an expansion of definitions to include the genders. The proposed bills (2012, 2019) were written as a replacement of the laws (rape, harassment, DV) in a gender-neutral form. They failed to pass because of political and conceptual controversies, although the fact of their existence shows the institutional agreement on the necessity. This lack of enactment indicates that there is no disconnect in policy, just that the necessity had been identified.
- **Global Practice Validates Neutrality:** Compare and Contrast Inclusion laws are effective. The 1983 reforms in Canada showed that gender-neutral laws can be both developed and protection-enhancing (in fact, they were exactly extended). Several similar nations are now aware that any human, irrespective of sex, may be both a victim and rapist of sexual violence. This implies that India is an outlier in as much as it

still holds gendered crimes. The international tendency is toward neutrality, and any perceived drawbacks of such a position have been typically counterbalanced in such jurisdictions with other, compensatory policies (e.g., direct assistance to those victims who are vulnerable).

- **Societal and Cultural Barriers:** Literature review reveals that patriarchy and social stigma continues to be an obstacle. The English legal commentary has used myths like that men always want sex, or that women cannot rape, as an excuse as to why even a neutral law can lead to failure without social change. As in India, research (e.g. of college age males) reveals exceptionally low levels of self-reports of being assaulted by women, which may be due to stigma. This implies that, in addition to legal reform, there should be sensitization and awareness to the people. However, the legal change is an indispensable prerequisite of any cultural change.
- **Women's and Gender Minority Rights:** Notably, the shift towards neutrality does not mean that women should be deprived of their rights. Quite to the contrary, the gender-neutral laws can cover all victims (women included in a broader measure). The same can be said of justice within lesbian or female-on-female assault cases; by explicitly incorporating female perpetrators, this too makes justice better. The rights to sexual orientation and gender identity also correspond with the gender-neutral laws (post-Navtej, NALSA). On the other hand, its lack can erode its implementation: the existing BNS actually weakened the measures against transgender and queer victims.

The general conclusion is evident: Indian sexual offence laws need gender-neutral laws to be demonstrated. Constitutional principles have given support to this, comparative precedent

¹³⁹⁷ *Kamaljit Kaur v. State of Punjab*, 2023 SCC OnLine SC 1602.

¹³⁹⁸ Law Comm'n of India, 172nd Report on Review of Rape Laws (2000); Justice J.S. Verma Comm., Report of the Committee on Amendments to Criminal Law (2013).

has given support to this, a number of expert analyses have given support to this and the injustices observed under the existing statutes have given support to this. All the sources and cases reviewed lead to the conclusion that the current gendered system is insufficient and the inclusive change is justified. Although there are more than reasonable fears regarding the manner in which to achieve reform without sacrificing the long-won gains of women, the available evidence is skewed towards the side that states the Indian law ought to be transformed into a gender-neutral one.

Recommendations

In order to overcome the specified gaps, the following reforms are proposed:

- **Amend Rape Provisions:** re-write the original definition of rape (Section 375/Clause 63 BNS) in a gender-neutral way. As an example, consider rape to mean non-consensual penetration of the body of a person without stating gender. This is what has been done in Canada and promoted by Indian scholars. Make sure that marital rape is criminalized in a consistent manner (nowadays BNS has the exception).
- **New Offence of Forced Penetration:** Introduce a crime of forced penetration through any method (vaginal, anal, oral, etc.) irrespective of the transgender of the perpetrator or the victim as is the case in some jurisdictions. This would enable, say, a man who is raping a man (anally penetrating) to be prosecuted as rape.
- **Gender-Neutral Sexual Harassment and DV Laws:** Change other gender-specific legislation, including the Domestic Violence Act, so that any domestic abuse victim can request relief (men, women, trans persons alike). Equally, make sure that the wording of the sexual harassment law (Victim and Perpetrator definitions in POSH Act) is

clearly gender-neutral (already in 2013, but with transgender context).

- **Preserve Special Protections for Women:** At the same time, retain or increase any available provisions designed exclusively to protect women, on constitutional basis. Article 15(3) permits special treatment of women; legislation may contain a provision that puts women victims in the priority group in some situations, or that preserves affirmative redress. This bi-polar approach balances equality and substantive justice.
- **Education and Training:** Educate police, prosecutors and judges to deal with gender-neutral cases. The main myths concerning male invulnerability and female perpetrators should be challenged in the course of public outreach campaigns that will urge all the victims to report. All genders should be covered by the support services (helplines, shelters).
- **Data Collection and Research:** Require sex-disaggregated data on sexual crimes and domestic violence to be used to create policies. According to Jus Corpus, gender-neutral legislation will promote the correct data and research regarding the underreported crimes, which will subsequently be used to implement additional reforms.
- **Regular Review of the Law:** Have a review committee (possibly under the Law Commission or a subcommittee of parliament) to oversee the working of reforms and suggest improvements, considering the reaction of the society.

Conclusion

The evidence presented in the study shows that the sexual offence legislations in India are in need of a reform to be gender-neutral. This is in conformity with constitutional guarantees of equality and international human rights standards. Gender-neutral approach would not eliminate any given protection available to

women but would broaden the area of protection to cover all the survivors. It would also aid in breaking stereotypes as far as sexual violence is a matter of not consenting to and being in charge of something, rather than a matter of pre-destined gender roles of both sexes. Even as one of the analyses ends, the adoption of gender neutrality to rape laws would be a major move towards an egalitarian criminal justice system.

It is difficult to enforce gender-neutral laws in India (cultural opposition, necessity to protect the rights of women, etc.), but the advantages of equality and justice in the long run are more significant than the challenges. This can be done by a gradual legislative campaign which will be supported by judicial interpretation and mass discussion. Following the international precedents (reforms of Canada in 1983 being one of the brightest models) India should readjust its legislations in accordance with the modern interpretations of gender and violence. It is then that the legal system would be able to fully protect and dignify all individuals regardless of the gender identity, and thus honor its constitutional commitment and bring justice to all the survivors.

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