

Gender Neutrality in sexual offences: A Necessity

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Abstract:

As per the Indian Penal Code, 1860 Rape Laws are described in Sections 375 and 376, according to which only a man can be convicted of a rape offence and only a woman can be a victim of the same. Whereas the laws pertaining to the throwing of acid is a gender-neutral law as the word 'whoever' is used in the said section (according to the criminal law amendment act 2013)

As per the Indian context of the rape laws, only a woman can be a victim of rape, as assumed by the Indian Society, as rape is an act of sex alone to fulfill sexual desires. However, the act is not only an act of sexual desires and lust, but is often a way of showing the dominance of a particular society or community, sex, caste, which shows the power of a particular community that owns a relatively weak community.

So, while considering the dynamics and needs of society. Adolescence, (from the age of 10 to 24), Transgender person, Male and heterosexual under custody are also victims in many cases.

Thus, this article focuses on the gender just definition of the offence of rape

Introduction:

The Constitution of India guarantees all people the Right to Life and Liberty as a fundamental Right, Everyone is equal before laws and everyone has equal protection of laws, which prohibits any discrimination based on sex.

The Indian constitution is not only a long celebrated document but it's a live document and it's a tool for social change as it is a dynamic document.

For a long time, gender-specific laws have been a part of Indian legislation but the law is not static all time it has to be changed according to the needs of the society. In changing scenarios and in challenges gender neutrality in law is the road towards social change and in the evolution of law itself.

Gender neutrality is a concept that postulates the eradication of gender distinctions in the drafting and enforcement of legislation. As far as rape laws are concerned, the aim is to destroy the male-female paradigm of rape in Indian legislation. Although the definition of rape under Section 375 of the Indian penal Code of 1860 has been amended several times, it still applies to the traditional notion of rape, in which victims and perpetrators are always women and men.

Gender neutrality in Indian rape laws was first dealt with in 1996 JusticeJaspal Singh (High court of Dehli) in *SudeshJhaku v. K.C. Jhaku*, the court observed that the offence of rape was the sole avenue under Indian Criminal Law for dealing with heinous acts of sexual assault before quoting the following passage from California Law Review :

“Men who are sexually assaulted should have the same protection as female victims, and women who sexually assault men or other women should be as liable for conviction as conventional rapists. Considering rape as a sexual assault rather than as a special crime against women might do much to place rape law in a healthier perspective and to reduce the mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions”

In the year 2000 Law commission of India has come up with the report i.e. 172report, In which after extensive study it had been found that there is a need for Gender Neutral Laws in sexual offences which is after the corollary to the case of *Sakshi v. Union of India*, (2004) In this it had put forth a need to introduce gender-neutral sexual offence Laws and to increase the ambit of section 375 of Indian Penal code,1860. Based on these recommendations government of itself introduced a bill in the Rajyasabha on 4th December 2012 the above said bill was for Gender Neutral Rape Laws, according to which both the victim and the perpetrator would be gender-neutral.

Before the bill could have become an Act, the nation was appalled by the Nirbhaya Rape Case incident and following this, the Government of India formed the Justice Verma Committee (JVC) and entrusted it with the task of presenting a report on the necessary reforms to be made to the law on rape. JVC tabled their report in January 2013 according to the Justice Verma Committee report it had recommended to widened the scope of the definition of rape under Section 375 of the IPC, 1860 by not keeping it concise to penile-vaginal intercourse. Interestingly, it also recommended that rape laws be gender-neutral. The perpetrator would be male-only but the victim could be male or female, which means these reports are in favour of gender neutrality of sexual offences these reports of the Justice Verma Committee had taken out as ordinance as parliament was not in session at that time. This promulgated ordinance was in enforce for the very brief period of 58 days in our country where rape laws were gender-neutral about the perpetrator and the victim. But, because of large outrage in media as well as people at large the ordinance was repealed and then the criminal law amendment came in and we were restored to the position as we see it today i.e. The only man is said to be the perpetrator and the only female is said to be the victim as per the 2013 criminal law amendment act. These recommendations have been enacted in the Criminal Law Amendment Bill 2013.

The latest developments in this regard are the bill presented by Mr. KTS Tulsi, which seeks to make rape law gender-neutral, which has not yet been passed and which has not yet been updated.

Gender neutrality in the law on rape has, in particular, three dimensions: as regards the victim; as regards the perpetrator, and neutrality in custody, war, and communal situations. This article is written to focus on the first two dimensions.

About the first dimension, it is argued that the term 'victim' has been misinterpreted by Indian legislators by limiting it to only female victims. Victims should also include members of the male and transgender communities. PUCL Karnataka investigated human rights violations in the transgender community and found sexual assaults to be quite widespread in their communities.

Another dimension of gender neutrality has two different concepts: female rape of a male and female rape of another female.

Another concept was dealt with in the case of Priya Patel v. M.P. State. Where the court found it quite inconceivable that a female could rape another female because there was no penile-vaginal intercourse between them. This ground is completely flawed, as there is some empirical evidence supporting the contention of female rape. A survey was conducted by the Center for Disease Control and Prevention, which found that out of 43.8 percent of lesbians who were sexually assaulted, 67.4 percent reported female offenders.

GENDER SPECIFIC RAPE LAWS & HUMAN RIGHTS

It is imperative to argue that rape laws are gender-neutral with a human rights approach. It is widely argued that human rights should become an essential practice and doctrine for the regulation of state law, in particular the rules on sexual assault in its criminal justice system. The right to equal protection of the law and the right to life and personal liberty are some of the basic human rights guaranteed to every human being, irrespective of the sex of the individual.

In the case of Bodhisattwa v. ShubhraChakraborty, the Supreme Court of India accepted the argument that rape amounts to a violation of a fundamental right as protected under Article 21 and also violates the basic human rights enshrined in the Indian constitution, namely the right to life and personal liberty. But Indian rape laws persevere with the conventional concept of rape, where only females can be raped and hence violate the human rights of men.

The legitimacy and rationale of Section 375 of the Indian Penal Code, 1860, under Article 15(3) of the Indian Constitution, which confers the power to make special provisions for women and children, may now be contended. The problem, however, lies in its misinterpretation. This provision does not restrain the government from making laws to protect the legitimate interests of the male community, and that is where the state fails to fulfill its obligations to provide equal protection of the law to every citizen of the country.

The most important argument put forward in favor of gender-specific rape legislation is the lack of statistical evidence in favor of male rape. This contention is flawed. The reason for the lack of statistical evidence is

simply that there is less reporting of such cases. This does not eliminate the possibility of such incidents happening.

The main reasons behind the less reporting of such cases are as follows:

- **The disgrace of hegemonic masculinity**

It is argued that patriarchal social building restricts men from filing complaints about sexual assault when the perpetrator is a woman. This stigma is also known as anti-masculinity, which has three characteristics: males are not feminine, men are physically aggressors, and are not heterosexual. This description leads to the creation of an unsubstantiated perception in which, if a male sexual victim reported his case, he would be treated as a female.

- **Lack of proper legislation to penalize convicts of male rape**

The persistent gender-specific nature of Indian rape laws has limited men to filing cases because they do not find such legislation to punish male rape offenders. Although the 2012 POCSO Act is gender-neutral concerning child sexual assault cases, adult male society is still hoping for gender-neutral rape legislation.

CONCLUSION:

Gender neutrality in the law on rape is not intended to completely desexualize rape. Rather, it seeks to increase the range of victims of rape. It seeks to remove the traditional male-female paradigm of rape. The State must be vigilant enough to set up an effective system to address all such issues in the best possible way.

Almost all of the laws in India are meant to be both male and female, and now it is time for legislators to include transgender in those laws. And besides, strangely, the rape laws are feminine-centric. The specificity of gender can no longer be said to serve any objective in the law on sexual harassment. There is no reason to suspect the prevalence of sexual assault outside the established framework. Only the establishment and implementation of gender-neutral legislation would make it possible to increase the coverage of these crimes. The legal definition

of rape must be reassessed and must always be comprehensively described.

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