



OFFENCE OF RAPE SHOULD BE GENDER NEUTRAL IN INDIA

By G. Priyadarshini

From CMR School of Legal Studies, CMR University

ABSTRACT

Most of the Indian laws have been drafted in the 19th century and in the recent years these laws have undergone a massive change to bring them in lines with the existing social, economic and political environment. One such law that requires an overhaul is that relating to sexual crimes. The current definition of rape means that only those with a penis can be guilty of this offence, and only those with female genitalia can be a victim of such a crime. Despite use of the term in public vernacular being wider than the legal definition, little advocacy has been focused on reforming this law, although those in the trans and intersex communities recognize their experiences are not reflected in the description of rape. It is necessary to note the importance, and difficulty, of making visible within the legislative framework both the gendered nature of sexual offending as well as the vulnerabilities of those who have non-normative bodies. This study helps to understand the need for which rape should be entirely gender neutral in India.

INTRODUCTION

According to Section 375 and 376 of the Indian Penal Code, only a man is capable of committing rape and a woman can only be a victim. The laws on stalking, voyeurism, and sexual harassment laws¹ are also sexually specific, i.e. the perpetrator is always a man, while the victim is always a woman. But the law on acid throwing is, however gender-neutral since the word used is 'Whoever.'²

The Indian law is based on the belief that only a woman can be a victim of rape. This stems from the assumption that rape is an act of sex only to satisfy the perpetrator's sexual desire.³ There is, however, increasing awareness that sexual assault is not only an act of desire and lust but also an act of conquest or dominance of one's caste, race, ethnicity, family, and acts of control and humiliation⁴. If this is the reason, then there is no explanation for men to be an exception in the case of rape victims in India. The main question is why is gender, the only identity to be cared for when the suspect or the victim of a sexual assault is decided. There are other identities that divide society as caste, class, and religion. Does gender outshine all these identities? Or do we have to look at them all together?

Another question that arises while figuring what is gender-neutral is whether it is fixed to only two categories such as the "male body" and the "female body." The basic assumption is that human bodies are obviously either male or female⁵ and

¹ The Criminal Law Amendment Act, § 354 (2013).

² The Criminal Law Amendment Act, § 326 (2013).

³ Feminist Perspectives on Rape, Stanford Encyclopedia of Philosophy (Dec. 2, 2019, 12:38 AM), <https://plato.stanford.edu/entries/feminism-rape/> [hereinafter Femenist].

⁴ Shashwat Bhutani, The Lacuna in Law: Desideratum of Gender-Neutral Rape Laws, Indian Journal of Law

and Public Policy, (Dec. 2, 2019, 1:02 AM), <https://ijlpp.com/the-lacuna-in-law-desideratum-of-gender-neutral-rape-laws/> [hereinafter Shashwat].

⁵ Claire Ainsworth, Sex redefined, Nature (Dec. 2, 2019, 4:23 AM), <https://www.nature.com/news/sex-redefined-1.16943> [hereinafter Claire].



everyone are blind to the violence suffered by the people who does not fall under that category. Everyone neglects the situation of the transgenic population in the Indian sense, which includes hijras and kothis⁶, as there is no clarity considering their sexual organs.

The punishment for the dominant male committing aggravated rape is provided in Section 376 of the IPC. According to Section 114A of the Indian Evidence Act 1872 after the amendment⁷, if a woman's evidence indicates that she did not consent to such an aggravated rape situation, she has shifted the presumption to him being guilty. Furthermore, it is incorrect to assume that people in strong positions can dominate only women and no other identities. One of the major questions should be addressed is- why coercive men on men intercourse is not included in the rape law? The only answer to this is India prefers discrimination between homosexuals and heterosexuals even after the decriminalization of homosexuality.

In its 172nd report, The Law Commission of India recommended that the rape law should be gender neutral⁸. It is argued that the principles of equality before law and equal protection of law, enshrined as fundamental rights in our Constitution must be applied to this situation as well.⁹ Prima facie, it can be said that the equal protection of all identities would result only from gender-neutral rape law. But the realities of the society in which

we live must not be forgotten. It is impossible to deny that women are the most vulnerable part of the population. There were concerns that a gender-neutral rape law, both for the perpetrator and the victim, would open up opportunities for women who have already been marginalized to be more traumatized and humiliated and would thus be defeating the very purpose of the law.¹⁰

EVOLUTION OF RAPE LAW INDIA

Before we turn to the gender neutrality aspect, it is important to understand the social context and attitudes of the people in India.

Since the 1980s, the Indian Women's Movement has revolved around the rape law reformation agenda.¹¹ For a long time, women's groups have had difficulties in extending the definition of rape.¹² Until 2013¹³, the rape was limited to penile-vaginal penetration only.

The Mathura rape case¹⁴ has been a historical case of the Indian Movement for Women's Rights. In this case, the Supreme Court held that Mathura, the girl raped by three police officers, submitted and consented to sexual intercourse because her body was not injured by any resistance. It was found that no injuries indicate consent. Following this infamous case, four law professors wrote an open letter criticizing the case to the Chief

⁶ Debjyoti Ghosh, *Invisible Citizens*, SJD, 9-12 (CEU eTD Collection, 2018).

⁷ The Criminal Law Amendment Act, § 375 (2013).

⁸ Law Commission of India, *Review of Rape Laws*, Report No. 172, ¶ 6 (2000).

⁹ Aditya Anand, *Gender Neutrality: Rights of one, abrogation of another?*, *Academike* (Dec. 2, 7:18 PM), <https://www.lawctopus.com/academike/gender-neutrality-rights-of-one-abrogation-of-another/>.

¹⁰ 37 Flavia Agnes, *Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law*, EPW, 844-847 (2002) [hereinafter Agnes].

¹¹ *Id.*,

¹² *Sakshi v. Union of India*, AIR 3566 (2004).

¹³ The Criminal Law (Amendment) Act, New Delhi: The Gazette of India (2013).

¹⁴ *Tuka Ram And Anr vs State Of Maharashtra*, AIR 185 (1979).



Justice of India.¹⁵ The case created a requirement for the accused to submit the burden of proof regarding the consent once the prosecution alleviates from proving the sexual intercourse.¹⁶ Another demand from activists was that rape trials must be recorded in the camera¹⁷ and the identities of the rape victims should not be revealed to the press¹⁸. Another request was to keep the sexual history of the victim irrelevant to decide whether or not the offender is responsible for rape.¹⁹ This led to substantial changes in the law on rape.

LAW REFORMS

In The Criminal Law (Amendment) Act of 1983, the CrPC was modified to allow for in camera rape trials.²⁰ It was also an offence to reveal the identity of the victim.²¹ An expanded punitive provision was made under Section 376(2) of the IPC for custodial circumstances and the extension of Section 114-A to the Indian Evidence Act, 1871 enabled the assumption of the absence of consent in certain cases.

In The Indian Evidence (Amendment) Act of 2002, the law prevented the prosecution from asking questions about the general moral nature and sexual history in cross-examining the prosecutor.²²

The report of the 172nd Law Commission recommended that both the victim and the

offender are gender-neutral under the rape law. The Justice Verma Committee report recommended that the victim should have gender neutral laws but the perpetrator should have gender specific laws. None of them, however, were incorporated.

The Delhi gang rape case led to substantial changes to the Indian Penal Code in relation to rape laws. In The Criminal Law Amendment Act 2013, special provisions were put in place for acid attacks, sexual harassment, undressing a woman, voyeurism, stalking and trafficking. Laws on sexual harassment, stalking and voyeurism²³ are all gender-specific. The laws against throwing acid are gender neutral.²⁴ In addition to penile-vaginal penetration, the definition of rape was extended to include oral, anal and any object insertion into the vagina, urethra or anus of a woman.²⁵ The punishment for rape was increased in extreme and non-intensive cases.²⁶ Under the Act as per the Ordinances, the crime is not gender neutral. Only a man can therefore commit rape on a woman.

India has reformed its laws number of times to provide justice for the rape victims. But unfortunately, being a woman is the only criteria to get access to that justice.

GENDER NEUTRALITY

¹⁵ Upendra Baxi, An Open Letter to the Chief Justice of India (1979).

¹⁶ Agnes, *supra* note 10.

¹⁷ The State of Maharashtra & Anr. v. Dr. Praful B. Desai & Anr., CRA 476/477 (2003).

¹⁸ SC bars media from revealing identities of victims of rape, sexual assault, National Services Division (Dec. 2, 2019, 8:45 PM), <http://newsonair.nic.in/Main-News-Details.aspx?id=356551>.

¹⁹ Agnes, *supra* note 10.

²⁰ The Criminal Law Amendment Act, § 327 (1983).

²¹ Indian Penal Code, § 228-A (1860).

²² N Jagadeesh, Legal changes towards justice for sexual assault victims, Indian Journal of Medical Ethics (Dec. 3, 2019, 9:11 PM), <https://ijme.in/articles/legal-changes-towards-justice-for-sexual-assault-victims/?galley=html>.

²³ The Criminal Law Amendment Act, § 354 (2013).

²⁴ The Criminal Law Amendment Act, § 326 (2013).

²⁵ The Criminal Law Amendment Act, § 375 (2013).

²⁶ The Criminal Law Amendment Act, § 376 (2013).



The fundamental feature of gender-neutral reforms is that the definition of rape is expanded to include male victims and female perpetrators. Therefore, they are 'neutral' but only in the sense that men and women are potential rapists and victims.

NEUTRALITY CONCERNING THE VICTIM

Traditionally, only 'a woman' was considered to be the 'victim'. Sadly, India's rape law still relies on the presumption that a rape victim can only be a woman. It is believed that rape is an act of sex purely to satisfy the perpetrator's sexual desire.²⁷ It is however increasingly clear that sexual attacks are a form of dominance or superiority of one caste, class, religion or community over another, and are acts of power and humiliation, and not just an act of lust and desire.²⁸ If this is the reason, then there is no justification of men being exempted from being a rape victim in India.

Further, the word gender is widely understood to constitute only the set of categories of the 'male body' and the 'female body'.²⁹ We assume that human bodies are clearly either male or female and turn a blind eye to violence suffered by those who do not fall under the normative understanding of what it is to be a man and a woman. We overlook the plight of the transgender community, which includes hijras and kothis in the Indian context and the intersex, a

condition in which one's sexual organs are ambiguous.

1. The transgender community

The traditional and mythological evidence is sufficient that the transgender community has always been rooted in India. Indeed, in India, Hijra traces their roots in the Ramayana and the Mahabharata legends.³⁰ There is a lot of evidence regarding the high sexual and physical abuse against trans women and those who identify throughout the trans-feminine continuum.

The term 'transgender' describes 'people who do not comply with traditional concepts of gender identity, appearance and expression'.³¹ It includes hijras, kothis, and trans-sexuals. While some undergo surgery to transform into the opposite sex, others play the role of the opposite sex.

The history of trans-misogyny has created unique hazards for trans women, including street violence, sexual harassment, sexual assault threats and real sexual abuse within the public domain - All related to trans women as breakers of gender standards in some way. Trans people are subjected to violence, even in their intimate relationships.

Several studies have documented transgender-based sexual and physical violence.³² The Peoples' Union for Civil Liberties - Karnataka researched violations of human rights against the Bangalore

²⁷ Feminist, *supra* note 3.

²⁸ Shashwat, *supra* note 4.

²⁹ Claire, *supra* note 5.

³⁰ Siddarth Narrain, Being A Eunuch, Counter Currents (Dec. 3, 2019, 9:44 PM), <https://www.countercurrents.org/gen-narrain141003.htm>.

³¹ Prathima R Appaji, The Hijra and Kothi Movement; a struggle for respect, Mindtext (Dec. 3, 2019, 9:58

PM), <file:///E:/cmr%20th%20sem/Article/Manuscript%20Submission%20CrLR/3FE150D0-E784-49BD-8328-4134C0E87955.pdf>.

³² Responding to Transgender Victims of Sexual Assault, Office for Victims of Crime (Dec. 4, 2019, 10:27 PM), https://www.ovc.gov/pubs/forge/sexual_numbers.html.



transgender community. Sexual violence against trans-males, especially by family members and intimate partners, is high.

2. Male on male rape

For too long the same sex male rape has remained a 'dark secret' because of social pressures that prevent men from thinking about their sexual violence experience. When a man is coerced into unwanted sexual activity, he becomes a victim of a sexual attack. Rape doesn't mean sex, but the urge to dominate and hurt someone else. Even if the rape is not physical, it is a violation that forces anybody into unwanted physical acts.

Male-to-male rape perpetrators have an average age of 26 years.³³ They are usually identified as heterosexual and typically participate in mutual sexual relations. Most men who assault men say the victim's gender doesn't matter.³⁴ They rape to:

- "Control and conquer
- Act out feelings of revenge
- Resolve conflicts about their own sexuality
- Gain status among similar men by being an aggressor"³⁵

Males who are considered to be weak are the goals. Young boys, adolescent men, institutional men and disabled men are especially vulnerable to this type of violence.³⁶ In addition to the belief that homosexual men commit sexual abuse, evidence shows that men who identify as heterosexuals are the perpetrators of sexual

abuse on a massive scale.³⁷ According to estimates, heterosexual men commit 96-98% of all sexual violence.³⁸ Increased attention and awareness of sexual violence and, in particular, increasing recognition of male victimization have led to a rise in the number of studies on the prevalence of sexual assault on boys and men. Research indicates that there are wide estimates of sexual abuse perpetrated against boys and men ranging from one-fifth to one-eighth of men who report sexual assault. Most studies have shown that approximately 5-10% of boys and men in their lives will be raped.³⁹

NEUTRALITY CONCERNING THE PERPETRATOR

While there is a general consensus on the inclusion of the victim, it is widely discussed whether a woman can be a rapist or not. In its 172nd report, the Law Commission of India recommended that the law on rape be sexually neutral. The Criminal Law Amendment Ordinance 2013 neutralized the crime of rape. Nonetheless, in the Amendment Act 2013, the gender specificity has been maintained. Recently, in 2019, KTS Tulsi introduced a Bill before the Rajya Sabha to declare the sexual offences gender neutral.

1. Female on male rape

There are opinions for both, for and against women being the perpetrator.

People who oppose gender neutrality challenge women's ability to rape. This is because a man must be sexually excited to

³³ Margret Roberts, When a man is raped: A survival guide, NSW Health Education Centre against Violence (3rd ed. 2013) [hereinafter Margret].

³⁴ *Id.*,

³⁵ *Id.*,

³⁶ Male Survivors of Sexual Violence, Michigan Resource Center on Domestic and Sexual Violence, Michigan government, 2016 [hereinafter Michigan].

³⁷ *Id.*,

³⁸ Margret, *supra* note 33.

³⁹ *Id.*,



have sex with a woman. When a woman tells a man that he should have sex with her, it won't work because the man is so scared and disoriented that he won't be aroused. In that case, the man will not be able to have sex with the woman in the correct physical mood.⁴⁰ This argument assumes that men are stronger and can commit rape and women cannot because a woman does not have the ability to commit rape both physically and biologically.⁴¹ But this is based on the premise that rape only involves penile vaginal penetration.⁴² However rape is now no longer confined to penile vaginal penetration in India as it has been until now. It also involves item insertion, oral and anal penetration.⁴³ Additionally, even if it's penile-vaginal, the erection, i.e. the arousal of the penis, cannot be said to indicate consent. This argument is based on several studies that show that fear, anxiety and humiliation can lead to erection.⁴⁴

Rape has not only become a prerogative for men, but also a man's fundamental weapon of strength against women. In spite of her physical protests and struggles, his forced entry into her body was the vehicle for his victorious conquest over her being, the ultimate test of his superior strength, the

victory of his virility. Rape is considered to be an indication of men's power and control over women. Most people are stronger, so they must be able to defend themselves from rape. An absurd impossibility is a man unable to defend himself.⁴⁵ Questioning a man's strength when he is subjected to rape is an extreme kind of discrimination. Men are stronger but that does not deny the fact they are also being raped. Recently, a 22 year old man was raped by 4 stalkers.⁴⁶ Just because he was subjected to rape, it does not make him weaker. One man cannot fight against a group of perpetrators.

It is assumed that women raping men is not an issue in the society.⁴⁷ It is stressed by the critics of gender neutral that not in one instance a woman raping a man has occurred in India throughout history. Unless strong empirical evidence demonstrates that men were abused by women, a law cannot be made sex-neutral. On the one hand, this argument is based on the fact that women are being raped more often, but there are evidences to prove that, men are also being raped and that is mostly other men, sometimes by woman too.⁴⁸ Various studies have shown that women rape men, with

⁴⁰ Bartholomew Madukwe, Can a female commit rape? It's difficult for a man to be raped – Prof Itse Sagay, Vanguard (Dec. 5, 2019, 10:45 PM), <https://www.vanguardngr.com/2013/04/can-a-female-commit-rape-its-difficult-for-a-man-to-be-raped-prof-itse-sagay/>.

⁴¹ Sally Moore, 'Rape Is a Crime Not of Lust, but Power,' Argues Susan Brownmiller, People (Dec. 5, 2019, 11: 09 PM), <https://people.com/archive/rape-is-a-crime-not-of-lust-but-power-argues-susan-brownmiller-vol-4-no-19/>.

⁴² Jai Vipra, A case for gender neutral rape laws in India, CCS Working Paper # 286 (2013).

⁴³ The Criminal Law Amendment Act, § 375 (2013).

⁴⁴ 11 Philip M. Sarrel, Sexual molestation of men by women, ASB, 117-131 (1982).

⁴⁵ Ayeshea Perera, Why a gender neutral anti-rape law isn't anti-women, Firstpost (Dec. 5, 2019, 11: 17 PM), <https://www.firstpost.com/living/why-a-gender-neutral-anti-rape-law-isnt-anti-women-657065.html> [hereinafter Perera].

⁴⁶ Saurabh Vaktania, Mumbai: Four stalkers use 22-year-old man's Instagram selfie to trace his location, rape him, India Today (Dec 21, 2019, 9:10 PM), <https://www.indiatoday.in/crime/story/mumbai-man-raped-moving-car-instagram-location-1627346-2019-12-11>.

⁴⁷ Perera, *supra* note 45.

⁴⁸ *Id.*,



sufficient empirical data.⁴⁹ “Victim surveys conducted by the British men and by Mexicans showed that from 3 to 8% of the men in their lives reported the incidence of at least one adult sexual assault, with at least 5 to 10% of all male victims of rape. Male offenders are responsible for the majority of these crimes, but it is estimated that 6 to 15% of these sexual assaults can involve women perpetrators.”⁵⁰ Male victimization has become increasingly recognized worldwide. Legislation introduced about gender neutrality includes the following jurisdictions: Canada and all Australian states; the Republic of Ireland, Finland, England and Wales and the majority of the United States.⁵¹

It is a basic assumption that men and women experience sexual assault differently. Since men and women in our patriarchal society are treated differently, the effects of the sexual abuse are also different. It is true that the society searches for a chance to blame the woman even if she is the victim- ‘Why did she have to go out at night? She is a fool. She wore short cloths. She must have consented to it’. The remarks are interminable. At every point of the trial, her conduct is examined (Why doesn't she cry as she testifies? She is lying!). The verdicts declare that rape is a matter of “deathless shame”.⁵² The so-called empathy of society towards the victim often decreases victim's self-esteem. She must follow certain standards. But there are no such standards to regulate men's behavior. No one asks a man whether he is a virgin while fixing marriages. A sexual assault therefore

has a profound impact on a woman's psychological condition. Men don't have to deal with this. Rapes have far-reaching consequences for a woman. This is based on the claim that the masculinity of men is challenged by rape, while “reinforces heterosexual normative women's self-concepts on women” in women's cases.⁵³ In addition, the reactions of adult men and women to violations have important similarities. They refused to explore the entire spectrum of victim reactions including physical and emotional reactions and victim's attempts to normalize or diminish the experiences of their victims. This does not mean that all victims had rape in the same way, but there are strong correlations, based on current literature. In the context of male rape, the effects of women's attacks can also be distinguished from those of men. In these cases, male victims tend to have fewer negative reactions than females, while men who are sexually abused by women can and do suffer severe traumas. It is also important to recognize that, like the female victims, men who are raped by partners or by friends are faced with certain problems that are not faced by men who are raped by strangers. This is a particular area that needs further study because this is probably “the most understudied subject of homosexual abuse.”⁵⁴ It has to be pointed out. Conversely, parallels between male and female victims are far clearer and well established where the attacker is male. Therefore male or female rape can be considered as a serious, long-term trauma to victim psychologically and emotionally. However, there is no clear

⁴⁹ Michigan, *supra* note 36.

⁵⁰ Perera, *supra* note 45.

⁵¹ 6 Philip Rumney, In Defence of Gender Neutrality Within Rape, SJSJ, 481-522, 486 (2007) [hereinafter Rumney].

⁵² Madan Gopal Kakkad v. Naval Dubey & Anr., 3 SCC 204 (1992).

⁵³ Rumney, *supra* note 51 at 507.

⁵⁴ *Id.*,



justification for the contention that male rape should be classified differently from female rape by criminal law, despite discrepancies between men and women's experience (e.g. challenges to masculinity in the case of male rape).⁵⁵

A further argument given by people not supporting gender neutrality is that woman's status in India has deteriorated over the years and the situation only worsens if sex-neutral legislation comes into force.⁵⁶ The modesty of a woman is always seen as her greatest asset. People involved in sexual activity before marriage are considered immoral, especially woman. In reality, even our country's judges do not stop passing these remarks about the victim's character. The PV test for rape victims is profoundly invasive and humiliating.⁵⁷ It is used to assess the victim's sexual history and continues to be performed rape survivors by doctors. Research has shown that reduced sentences for perpetrators have been levied in situations where a woman is sexually active before marriage, although the law does not allow for consideration of the past sexual background.⁵⁸ The Court is allowed only under certain special circumstances to

mitigate the punishment of a sex offender.⁵⁹ Such conditions have not been established, so the judges have explanations like the perpetrator has lost his job⁶⁰, was humiliated in the society⁶¹, couldn't resolve the fit of passion because of the young age⁶² and there is no much harm since during the trial the victim got married⁶³. The excuses are irrational, promoting stereotypes like "Men will be men," "Woman's fault," marriage is the key part of the life of women," etc. But none of this justifies the fact that men are ignored from being subjected to justice in case of sexual crimes, especially rape.

It is a myth that Gender-neutral laws will have a negative effect on women victims.⁶⁴ It is an assumption that a gender-neutral rape law will allow opportunities to cause further pain, embarrassment and negate the very aim of changes on a vulnerable group. Women victims would be advised to withdraw their claims as the perpetrator could easily file a counter-claim.⁶⁵ The women victims would even be afraid to lodge charges. Since many rapes are already unreported⁶⁶, bringing about sex-neutral legislation would only increase his number and prevent the woman from filing the complaints. Gender equality was perceived as a breach of feminist

⁵⁵ *Id.* at 508.

⁵⁶ Agnes, *supra* note 10.

⁵⁷ Vageshwari Deswal, Virginitly Test: Why the two finger test is unscientific, illogical and illegal, Times of India (Dec. 5, 2019, 11: 43 PM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/virginity-test-why-the-two-finger-test-is-unscientific-illogical-and-illegal/>.

⁵⁸ Mrinal Satish, Virginitly and rape sentencing, Times of India (Dec. 6, 2019, 12:25 AM), <https://nludelhi.ac.in/UploadedImages/7c23fbec-6b60-4587-a0b3-2c999bdd996a.pdf>.

⁵⁹ *Id.*,

⁶⁰ Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, AIR 753 (1983).

⁶¹ *Id.*,

⁶² Raju v. State of Karnataka, 1 SCC 453 (1994).

⁶³ Baldev v. State of Punjab, AIR 1231 (2011).

⁶⁴ Agnes, *supra* note 10.

⁶⁵ Bindu Shajan Perappadan, Wanted: Gender Just Rape Laws, The Hindu (Dec. 6, 2019, 1:05 AM), <https://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/wanted-genderjust-rape-laws/article4483445.ece>.

⁶⁶ Rukmini S, India officially undercounts all crimes including rape, The Hindu (Dec. 6, 2019, 1:19 AM), <https://www.thehindu.com/news/national/india-officially-undercounts-all-crimes-including-rape/article5121114.ece>.



principles and a gender activist attack.⁶⁷ Feminists have criticized it as a “feminism backlash”.⁶⁸ The answer to this question, however, is that acceptance of male victimization does not negate the rape of women. In fact, a number of feminists have identified male victimization.⁶⁹ For e.g., Susan Brownmiller also suggested that the offence cannot be linked with the gender of the victim in her *Against Our Will: Men, Women and Rape*.⁷⁰ Essentially, gender-neutral law does not make female victims more vulnerable, it only acknowledges male victimization.⁷¹

Parliament has passed the Protection of Children from Sexual Offences Act, 2012, which protects children from sexual abuse. The Act describes a child as anyone below the age of 18 and is gender-neutral.⁷² This law shall cover all situations in which young men and young girls are sexually abused. Part III of the Constitution provides every citizen of India with fundamental rights.⁷³ Article 15 provides for a ban on discrimination on the grounds of sex and Article 14 enshrines the right to equality before law. Consequently, men must have the same rights as women. While men's rape is less frequent than women's rape, the right to equality cannot be denied. The criminal law rule is definitely that all citizens should be equally protected from similar damage. The case for treating

crimes of the same atrocity seems stronger than the one for making a distinction between the penetration of the female body and the penetration of the male body irrespective of the actor's sex.⁷⁴

The social stigma faced by women in India is a hard fact. But there is no reason why male victims of the same crime should not be protected. The consequences and social stigma faced by men are different.

If a man claims a woman raped him, he is not treated as a ‘real man,’ because clearly men are higher and stronger than women, according to the patriarchal standard presumption. In fact, male dominance and the concept of patriarchy is why men don't come out of the shield to report rape. Consequently, men are given afraid of rapes. Their manhood is questioned;⁷⁵ Society mocks and harasses him because he was "raped by a woman". It is considered to be his fault.

2. Female on female rape

In *State Govt. v. Sheodayal* (1956), Madhya Pradesh (M.P.) High court held that another woman, subject to Section 354 of the IPC, can outrage a woman's modesty.⁷⁶ In the case of *Priya Patel v. State of M.P.*⁷⁷, the Supreme Court answered the question whether a woman can commit gang rape. Section 376(2)(g) stipulates that anyone engaged in gang rape shall be punished and so on. Furthermore, the explanation states that if a

⁶⁷ *Id.*,

⁶⁸ 1 Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?*, SJSJ, 742-756 (2002).

⁶⁹ Rumney, *supra* note 51 at 481.

⁷⁰ *Id.* at 491.

⁷¹ *Id.* at 493.

⁷² Tough law on sexual offences against children comes into force, *The Hindu* (Dec. 6, 2019, 1:31 AM), <https://www.thehindu.com/news/national/tough-law->

[on-sexual-offences-against-children-comes-into-force/article4095666.ece](https://www.thehindu.com/news/national/tough-law-on-sexual-offences-against-children-comes-into-force/article4095666.ece).

⁷³ The Constitution of India, (1950).

⁷⁴ Rumney, *supra* note 51 at 484.

⁷⁵ *Id.* at 501.

⁷⁶ 8 Sneha Annavarapu, *Hetero-normativity and Rape: Mapping the Construction of Gender and Sexuality in the Rape Legislations in India*, IJCS, 248-264, 258 (2013).

⁷⁷ *Priya Patel v. State of Madhya Pradesh*, 6 SCC 263 (2006).



woman is raped by one or more persons in a group that acts to promote their common purpose, they shall be treated as gang rape committed. Thus, the penetration act is not technically necessary for each group member to perform. Rather, the “common intention” is sufficient to condemn a person for gang rape. The court held, however, that a woman cannot have an intention to commit rape. It is therefore impossible for a woman to be able to rape another woman.⁷⁸ This reasoning is essentially flawed because the section only includes common intention. Why can't a woman be willing to rape another, even if we assume that she can't physically rape? While it has been widely discussed in the public domain whether a female is able to rape a male, scholars, and activists in India remained silent on this side of sex neutrality.

CONCLUSION

It cannot be denied that there is existence of male and transgender rape in India. Gender-neutral rape legislation is the direction we must strive to take. But the fear of a abuse of the law creates a difficult situation. Here, the privileges of all identities must be balanced. Clearly, we need a law that protects all identity, namely males, females and the transgender community against sexual violence, on the one hand, and does not create a harmful environment for the most vulnerable segment of women's society on the other. That's the road to India. This ensures that transgender and male victims are protected against homosexual rape. At the same time, there is no concern about counter complaints or prejudice against women. The law must include gender just, gender-sensitive and not against gender-neutral rape laws, as diverse feminists, queer groups and

individuals put it. In case of gang rape and abetment to rape, the perpetrator must include a woman.

BIBLIOGRAPHY

1. Shashwat Bhutani, The Lacuna in Law: Desideratum of Gender-Neutral Rape Laws, *Indian Journal of Law and Public Policy*.
2. Claire Ainsworth, Sex redefined, *Nature*.
3. Debjyoti Ghosh, Invisible Citizens, *SJD*, 9-12 (CEU eTD Collection, 2018).
4. Law Commission of India, Review of Rape Laws, Report No. 172, ¶ 6 (2000).
5. Aditya Anand, Gender Neutrality: Rights of one, abrogation of another?, *Academike*.
6. 37 Flav Agnes, Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law, *EPW*, 844-847 (2002).
7. Upendra Baxi, An Open Letter to the Chief Justice of India (1979).
8. SC bars media from revealing identities of victims of rape, sexual assault, National Services Division.
9. P. N. Jagadeesh, Legal changes towards justice for sexual assault victims, *Indian Journal of Medical Ethics*.
10. Siddarth Narrain, Being A Eunuch, *Counter Currents*.
11. Prathima R Appaji, The Hijra and Kothi Movement; a struggle for respect, *Mindtext*.
12. Responding to Transgender Victims of Sexual Assault, Office for Victims of Crime.
13. Margret Roberts, When a man is raped: A survival guide, NSW Health Education Centre Against Violence (3rd ed. 2013).
14. Bartholomew Madukwe, Can a female commit rape? It's difficult for a man to be raped – Prof Itse Sagay, *Vanguard*.

⁷⁸ *Id.*,



15. Sally Moore, 'Rape Is a Crime Not of Lust, but Power,' Argues Susan Brownmiller, People.
16. Ayeshea Perera, Why a gender neutral anti-rape law isn't anti-women, Firstpost.
17. Mrinal Satish, Virginity and rape sentencing, Times of India.
18. Bindu Shajan Perappadan, Wanted: Gender Just Rape Laws, The Hindu.
19. Rukmini S, India officially undercounts all crimes including rape, The Hindu.
20. Tough law on sexual offences against children comes into force, The Hindu.
21. Jai Vipra, A case for gender neutral rape laws in India, CCS Working Paper # 286 (2013).
22. 11 Philip M. Sarrel, Sexual molestation of men by women, ASB, 117-131 (1982).
23. 6 Philip Rumney, In Defence of Gender Neutrality Within Rape, SJSJ, 481 (2007).
24. 1 Patricia Novotny, Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?, SJSJ, 742-756 (2002).
25. 8 Sneha Annavarapu, Hetero-normativity and Rape: Mapping the Construction of Gender and Sexuality in the Rape Legislations in India, IJCJS, 248-264, 258 (2013).
26. Male Survivors of Sexual Violence, Michigan Resource Center on Domestic and Sexual Violence, Michigan government, 2016.
27. Saurabh Vaktania, Mumbai: Four stalkers use 22-year-old man's Instagram selfie to trace his location, rape him, India Today.
