

Gender Neutrality in the Definition of Sexual Offences Under Indian Criminal Law

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Abstract

Gender equality is an age-old concern in Indian society where women are struggling for years to attain equal status than to men in difference spheres of life, like work, status and opportunities. There have been many revolutions brought for the welfare of the society like the one by Raja Ram Mohan Roy to curb the age-old "Sati Pratha". Time and again Supreme Court of India have also given verdicts to guarantee equality to women. The Constitution of India also provides for affirmative actions that may be taken by the state for the welfare of women. Many policies are made by the state in that regard from time to time like the Sukanya Yojana. It has been seen that all organs of the government have been working dedicatedly towards the goal of welfare of the women under the veil of gender equality. In this quest the contemporary issues are being neglected due to a biased belief of always a woman to be a victim. Probably that was the reason why Indian criminal laws depict women as victim and Men as perpetrator. Whereas, there have been multiple cases reported where woman is committing a sexual crime against a woman, man or a transgender but no FIR can be lodged against such woman due to absence of a proper legislation addressing the concern. The paper aims at addressing such issues by analyzing the legislative provisions, visiting the data given by NCRB, and suggesting an approach that is gender neutral than one targeting only men or women.

Keywords: Gender equality, FIR, Gender neutral etc.

Since the dawn of time, men and women have had predetermined roles. Because men are generally seen as stronger than women, women have been

reduced in strength. Since then, progress has been made around the world, with the exception of men still being viewed as the powerful ones. Nowadays, women may be found in all the traditionally male-dominated fields, like boxing, law, and even cooperative work. For men, though, the same cannot be true. Men are still denigrated for being feminine today. Men are conditioned to believe that showing fear or crying is a sign of weakness, therefore they never express their worries. A patriarchal society, institution, or nation is one that is dominated or controlled by men, according to the Oxford English Dictionary (https://www.oxfordlearnersdictionaries.com/definition/american_english/patriarchy). Men are expected to be domineering and to behave in a particular way in Indian society, which is patriarchal. If they do not conform to these expectations, they would be mocked, mostly by other men. Men's permission to an act of physical closeness is taken for granted due to this perception of them. As vital as it is that women be protected by legislation in our nation, sexual offenses against men cannot be disregarded. The laws that prohibit sexual offenses exclusively mention men as the offenders. It has been determined that men are the ones who commit sexual offenses in India most frequently. The primary justification for doing away with laws pertaining to sexual offenses is that men commit these crimes far more frequently than women. The Indian law on rape, found in Section 375 of the Criminal Code of 1860, designates only men as the offenders and women as the victims (Section 375 of Indian Penal Code, 1860). All laws pertaining to sexual offenses follow the same principles, with the exception of gang rape, which views only a woman as the victim and 'one or more persons' as the offender.

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Historical Background

Prior to comprehending the reasons behind the legislative restrictions on these regulations, it is imperative to gain insight into the mindset of the Indian populace. India in the modern era is both very distinct and very similar. While it is evolving and changing, it nevertheless retains much of its customs and patriarchal ideology. The idea that women needs to be protected from males is prevalent in our patriarchal society. Historically, only two genders were taken into account. Despite being acknowledged, transsexual people received no protection. For most of the nation, the Mathura rape case of 1972 (Tuka Ram and Anr. v. State of Maharashtra, 1979) opened people's eyes as consent was for the first time questioned because of the ignorance of a small number of knowledgeable academicians. Because Mathura's body showed no evidence of fight, the Supreme Court decided that the tribal lady from Maharashtra who had been raped by three police officers had surrendered and given her agreement to the sexual encounter. It was determined that consent implied by the absence of harm. Four law scholars denounced the case in an open letter to India's Chief Justice following this contentious case. This case led to a demand that, after the prosecution had fulfilled its obligation to show sexual activity, the accused bear the burden of proof regarding permission.

The Arguments made against legislation that are gender neutral were:

- A patriarchal culture,
- Women are not physically capable of raping males,
- Sincere men are capable of self-defence,
- Is not true to social reality, and,
- The way that men and women react to sexual assault varies. (Tuka Ram and Anr. v. State of Maharashtra, 1979)

The paper that follows discusses each of these concerns, showing that they are only arguments that can be made in order to safeguard justice and the fundamental rights of every Indian citizen, which are protected by Article 21 of the

Constitution of India (Article 21 of Constitution of India).

India's Laws Regarding Rape

The Indian Penal Code's treatment of rape and sexual offenses is highly biased since it exclusively protects one gender (Mishra, A., Bibhu, N. K., Raghuvanshi, K. S., Tiwari, A., & Dubey, B, 2025); nonetheless, this implies that both genders are capable of committing and being victims of these crimes. According to Indian Penal Code Sections 375 and 376 (Section 376 of Indian Penal Code, 1860), only a male can be held guilty of rape, and only a woman can be the victim. Moreover, the regulations controlling voyeurism (Section 354C of Indian Penal Code, 1860), sexual harassment, and stalking (Section 354D of Indian Penal Code, 1860) are exclusive to women, meaning that a male can only be the offender and a female can only be the victim. However, the laws connected to throwing acid are gender neutral because the term used is "anyone" (Section 326B of Indian Penal Code, 1860).

According to Indian law, a rape victim is limited to being a woman. This is a result of the perception that rape is merely an act of sex committed to sate the sexual appetite of the perpetrator. Nonetheless, there is a growing understanding that sexual violence serves as an act of power and shame as well as a way to express control or superiority of one caste, class, religion, or community over another. It is no longer only an act of intense desire. If this is the case, there's no reason why men in India shouldn't be able to experience rape as victims. The conditions of male dominance and attacks on women that existed in the past have changed over the years, and we are now in a situation where these laws and regulations are hurting the other genders and falsely accusing them of crimes because the laws that are currently in place acknowledge women as victims of sexual offenses like rape and sexual assault while ignoring the possibility that they may also be the offenders.

In a recent study, the Centre for Civil Society in Delhi discovered that almost 18% of adult male Indians questioned said they had been forced or pressured into having sex. (Jai Vipra, 2013) Even

while research on male rape and sexual assault has not been as thorough as that on female rape, there are a number of statistics that suggest that male rape occurs more frequently than is generally believed. There are no research papers, data, or documented cases of men being sexually molested because they fear ridicule from others around them. To uphold the stereotype that men are not sexually abused, a man who is sexually raped by a female is considered timid, and a guy who is sexually assaulted by another man has his manhood ridiculed.

The Law Commission of India suggested gender neutrality for rape laws in its 172nd report. (172nd Law Commission report, 2002) It is proposed that this situation also requires the application of the ideas of equal protection under the law and the safeguarding of fundamental rights found in our Constitution of India. On the surface, it appears that only gender inclusive rape laws might result in equitable legal treatment for all genders. But we must never lose sight of our society's realities.

It is indisputable that women represent the most vulnerable segment of the population. This results from the notion that rape is only a sexual act committed to satiate the offender's craving. Nonetheless, there is a growing understanding that sexual violence serves as a tool for acts of power and humiliation as well as a way to assert the superiority or domination of one caste, class, religion, or community over another. It is no longer only an act of love and desire. If this is the case, there is no justification for preventing men from falling victim to rape in India.

Rape Laws and Transgenders' Community

Non-conformists, or those who do not adhere to conventional notions of gender identity, expression, and appearance, are called 'transgender' in which Hijras, Kothi, and transsexual persons are included. Some people play the opposite sex, while others look for medical procedures to change into the opposite sex. There is a wealth of historical and mythological evidence indicating that transgender individuals have always found safety and refuge in India. The Hijra community in India can, in fact, be traced back to legends found in the Ramayana and the

Mahabharata. Therefore, why are they not given the same possibilities as other Indian citizens and are not given much recognition by the law?

It wasn't just men that politicians disregarded in this way. Rape and other sexual assault crimes are committed against transgender persons. It is imperative that criminal law be completely revised in order to make fundamental regulations accessible to victims of all genders. The Supreme Court ruled in *State of Punjab v. Ramdev Singh* (2004(1)SCC421, 2004), that rape is a crime against society at large in addition to being a crime against the person of the victim. It is an infringement of fundamental rights, particularly the most important one guaranteed by Article 21 of the Constitution of India.

The following instance is a glaring illustration of how males are not the only genders treated unfairly and differently. Anybody who attempts to act in a way that results in a transgender person being sexually assaulted suffers imprisonment for a minimum of six months and a maximum of two years, in addition to a fine, under Chapter 8, Section 18(d) of the Transgender Persons (Protection of Rights) Behaviour, 2019 (Section 18(d) of the Transgender Persons, 2019). This makes the state's decision for transsexual persons quite evident. Because sexual assault is now considered a minor misdemeanour punishable by a maximum of two years in prison and a fine, it is easy to see the stench of prejudice. However, similar offenses against transgender women are punishable under Section 376 of the Indian Penal Code by rigorous imprisonment of either kind for a term that may not be less than ten years, but may extend to life imprisonment, as well as a fine.

Rape Laws and Queer Community

Section 377 of the Indian Penal Code, which defines carnal intercourse as being outside the natural order, forbids forced man-on-man sexual conduct. It is extremely unsettling because gays' consenting sexual behaviour is mixed with male rape and sexual assault in India. It is important to distinguish between coerced and consenting sexual activity. Since the Criminal Amendment Act, 2013, rape convictions carry a minimum punishment of seven years in prison and a

maximum term of life in prison. In contrast, Section 377, which prohibits coerced sexual encounters between men, does not provide a minimum penalty. Rape is punished with a minimum term of ten years since it is assumed that the offense is serious when a minimum penalty is imposed. In India, male-on-male rape is hardly acknowledged at all.

In order for sexual attack against males as well as gays, transgendered, and transsexual people to be covered by rape laws, the three-member Verma Committee proposed that the victim be gender inclusive. According to Ratna Kapur (2013), Section 377 must be repealed in order to create a law that is really gender neutral. Regardless of gender, criminalizing non-consensual sex won't work until sexual minorities are first given the assurance that they can engage in consensual sex. (Ratna Kapur)

Conclusion

This essay seeks to raise awareness regarding the underrepresentation of women in laws intended to safeguard the nation's inhabitants, as well as the ways in which these laws have been selective in identifying those to protect and those who are capable of defending themselves for a variety of reasons previously mentioned. It is clear from reading the numerous rulings rendered by the nation's courts that these laws urgently need to be updated and changed because it is not safe to protect women exclusively from sexual offenses. It transgresses the fundamental rights guaranteed to each and every individual by our constitution. Although men seem to benefit from patriarchal culture on the surface, they also suffer greatly from it.

Significantly, gay activities have been recognized as war crimes since antiquity; yet, Indian politicians have chosen to ignore this problem, failing to recognise that anyone, regardless of gender, can be the victim or the abuser of sexual assault. Teaching the legal system and the general public how to attain sexual stimulation without knowing consent for sexual activity is a justifiable requirement.

We also found that, in contrast to popular opinion, men and women do not experience rape in distinct

ways. Research contradicts the male-dominated society's belief that men are naturally inclined or able to avenge rape. In response to criticism from radical feminists, we found that a number of feminist schools including well-known campaigners like Brown Miller have acknowledged and recognized the existence of male violence. The present phallus-centric laws that restrict the conversation about assault legislation must be abandoned, as our article demonstrates. Rephrasing all current laws in a sexually neutral manner is the first step towards recognising sexual assault or gender identity in general. This will reaffirm that sexual orientation will never again serve as the basis for determining legal wrongs. Furthermore, gender sensitization of the entire legal system and the upgrading of lawful instruments for investigative authorities are imperatives, as the law is nothing more than society's collective will. It takes diversity and comprehensiveness to create an inclusive society in both thought and deed.

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https://www.oxfordlearnersdictionaries.com/definition/american_english/patriarchy.

Section 375 of Indian Penal Code, 1860 states that, "A man is said to commit "rape" if he--- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:--- First.---Against her will. Secondly.---Without her consent. Thirdly.---With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Fourthly.---With her consent, when the man knows that he is not her husband and that her

consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.---With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.---With or without her consent, when she is under eighteen years of age. Seventhly.---When she is unable to communicate consent. Explanation 1.---For the purposes of this section, "vagina" shall also include labia majora. Explanation 2.---Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1.---A medical procedure or intervention shall not constitute rape. Exception 2.---Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

Tuka Ram and Anr. v. State of Maharashtra 1979 AIR 185.

Article 21 of Constitution of India states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Mishra, A., Bibhu, N. K., Raghuvanshi, K. S., Tiwari, A., & Dubey, B. (2025). The Role of Competition Law in safeguarding consumer protection and employment fairness. *Advances in Consumer Research*, 2(4).

Section 376 of Indian Penal Code, 1860 states that, "(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever,--- (a) being a police officer, commits rape--- (i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or (b) being a public

servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be pregnant; or (j) commits rape, on a woman incapable of giving consent; or (k) being in a position of control or dominance over a woman, commits rape on such woman; or (l) commits rape on a woman suffering from mental or physical disability; or (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Section 354C of Indian Penal Code, 1860.

Section 354D of Indian Penal Code, 1860.

Section 326B of Indian Penal Code, 1860.

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2004(1)SCC421.

Section 18(d) of the Transgender Persons (Protection of Rights) Behavior, 2019, states that, "harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine".

Ratna Kapur, GENDER, SOVEREIGNTY AND THE RISE OF A SEXUAL SECURITY REGIME IN INTERNATIONAL LAW AND POSTCOLONIAL INDIA, Melbourne Journal of International Law, Vol 14, Pg. 317.