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Editor In chief – Assistant Professor Mr. Janmejay Singh

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

ISSN : 2583-6323 (Online)

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Equal Rights for All: A gender neutral legal framework

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ABSTRACT:

There exists a stereotypical notion that men are strong and they can defend themselves from any sort of violence towards them, and if they fail to do so then they are not man enough. This is a classic example that the sufferers of the patriarchal society are not only women but men are also equally suffering because of this patriarchal mindset of the society as they are required to behave in a certain masculine manner and if they fail to do so then they are considered to be not man enough, and when it comes to sexual offenses it is considered that a man can never be a victim of any sort of sexual violence and even if a man is abused sexually then instead of being seen as a victim they are considered as a laughing stock in the society.

INTRODUCTION:

This article deals with sexual violence towards males and that rape laws should be gender-neutral. Many people don't realize that this is really a very serious issue and every year sexual violence towards other genders is increasing at a very steady pace, yes, by other genders we not only mean men but transgenders also. Although no committee in India has ever been established to find out exactly how many sexual offenses have been committed towards men a report of a Delhi-based center for civil society found that approximately 18% of Indian adult men have been coerced or forced to have sex and out of that in 16% of the cases the perpetrator has been a female and it should be noted that these facts come towards are highly underreported and not an accurate data as the rape of men has not been defined anywhere in India. In the US the percentage of convicted female perpetrators is 1% and the number of male convicts is 99% although 1% seems to be very less but still those who have committed the offense of rape toward another gender than female.¹ Thus it can be said that the notion that the victim of rape can only be female is highly incorrect.

¹ Adab Singh Kapoor, POSH Act : Discussing Gender Neutrality, Transgender Rights & Inclusion Of LGBTQ, Livelaw, (Aug. 04, 2023, 9:29 PM), <https://www.livelaw.in/columns/posh-act-discussing-gender-neutrality-transgender-rights-inclusion-of-lgbtq-157906>

Not only the offence of rape but many other offences like stalking, and voyeurism are also gender specific that is according to these sections the victim can only be a woman and the perpetrator can only be a man.

There is a misbelief that sexual offenses like rape are a result of lust and desire but this is highly incorrect as the fact is that people commit sexual offenses to show their dominance over another person just to humiliate them, and there is no logical reasoning that why a woman can have a lust towards a man or why a woman won't want to show her dominance over a man, Indian society is a highly patriarchal society and the women are often seen as the suppressed gender of the society and it is highly probable that a woman would always want to show her dominance over a man. Section 376 of the IPC provides for situations of aggravated rape in cases where the perpetrator is in a powerful or dominant position, and a woman can surely be in a dominant position. It is highly incorrect to assume that women in dominant positions won't ever violate a man sexually.

The Law Commission in its 172nd report² in 2013 stated that the rape laws in India should be gender neutral as the existing laws are highly against the principles of equality before the law enshrined in the constitution as a fundamental right. Gender-neutral laws would surely result in equal protection of all communities. Although we must look into the fact that still today majority of the rape victims are female only but still offenses against other genders are also a matter of concern, as there is no remedy for a man if he suffers any sort of sexual violence by a woman. The only remedy he can get is if he gets violated by a man which comes under section 377 of IPC and that too does not come under the category of heinous offences. This paper will deal with the reasons why these existing laws should be made gender-neutral.

WHAT IS GENDER NEUTRALITY:

We live in the twenty-first century, moving away from the past barriers, in today's world the role of every human being has changed. Women stepping out of the four walls of their houses shattered those notions of gender roles set in society, causing the world to witness growth in women's empowerment and setting examples for others in their respective professions. Women for example the likes of Indra Nooyi, Saina Nehwal, Mary Kom, PV Sindhu, Aishwarya Rai,

² Law Commission Report No. 172- Review of Rape Laws ,2000

Sushma Swaraj etc. have proven that they can not only stand shoulder to shoulder with men but also many times outperform them.

In the present era, where the debates and discussions on empowerment and equality of women have cloaked the globe in a race to make women's safety laws, many countries including India have not only overlooked the proper implications of women's safety laws but also the concept of gender-neutral laws.

Rape is defined in Section 375 of the Indian Penal Code, 1860.³ It explicitly begins with the words 'A man is said to have committed rape', for the simple reason that men are largely viewed as perpetrators, and a woman sexually coercing a man to make him penetrate her is inconceivable in a patriarchal society. For an instant, we agree on that and just focus on the constitutional perspective. The Constitution of India, 1950 provides every person equality before the law and gives every individual the right to live with human dignity. In addition to it, every citizen of the nation gets the right not to be discriminated against on the basis of religion, race, caste, sex, or place of birth.⁵ However, when it comes to offenses like sexual harassment, voyeurism, stalking, sexual assault, and rape cases, men and transgender communities of the society are always denied their rights. Gender neutrality in rape and sexual assault laws refers to the idea that the criminal law should acknowledge that all persons- men, women, and transgender can be rape victims as well as perpetrators.⁶ In several nations, gender neutrality in sexual assault laws has been brought, however, there is very little sensitization and understanding of male and transgender sexual abuse victims.⁸

"All human beings are potential rape victims. Spouses are raped. Male and female children are raped. Babies are raped. Physically handicapped persons are raped. Anesthetized patients are

³ Mishita Jethi, Rape -Textual or Psychological: The need to change Section 375 of the IPC, 1860, Legalserviceindia, (Aug. 04, 2023, 9:29 PM), <https://ftp.legalserviceindia.com/article/Rape-Textual-or-Psychological-The-need-to-change-Section-375-of-the-IPC.html>

⁴ The Indian Penal Code, 1860, Sec. 375, No. 45, Acts of Parliament, 1860 (India).

⁵ Navin Kumar Jaggi, Why There Is A Need Of Gender Neutral Laws In India?, Legalserviceindia, (Aug. 04, 2023, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

⁶ OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/IN/A_HRC_WG.6_13_IND_1_India_AnnexII.doc#:~:text=%E2%80%9CThe%20State%20shall%20not%20deny,within%20the%20territory%20of%20India.%E2%80%9D&text=Article%2015%20secures%20the%20citizens,birth%20or%20any%20of%20them., (last visited Aug. 6, 2023).

⁷ Navin Kumar Jaggi, Why There Is A Need Of Gender Neutral Laws In India?, Legalserviceindia, (Aug. 04, 2023, 9:29 PM), <https://www.legalserviceindia.com/legal/article-7370-why-there-is-a-need-of-gender-neutral-laws-in-india-.html>

⁸ *Id.*, at 04.

raped. Mothers, fathers, brothers, and sisters are raped.⁹ Adolescents rape one another as well as older persons and children.¹⁰ Male and female prisoners rape each other. During wars, soldiers have been known to rape entire communities.¹¹ Males rape females and males. Many rapists are gender and age blind. Females rape other females and males. No person is immune from the human potential to rape or be raped." – McMullen¹²¹³

True equality is where society views you as an individual irrespective of your gender. Gender neutrality, in ordinary parlance, would mean avoiding discrimination based on the gender or sex of an individual. In simple words, your office hires the best person for the job regardless of gender.¹⁴¹⁵

*A gender-neutral law is a law that does not differentiate between individuals based on their gender or gender identity. This means that the law treats all people equally, regardless of their gender. Gender-neutral laws are designed to promote fairness and eliminate discrimination based on gender.*¹⁶

Examples of gender-neutral laws include laws that prohibit discrimination in employment, education, housing, and public accommodations based on gender identity or expression. Gender-neutral laws also include laws that provide equal protection under the law for individuals who have been victims of domestic violence, sexual assault, or stalking, regardless of their gender.¹⁷

⁹ *Id*, at 04.

¹⁰ Penelope K. Trickett, corresponding authora Jennie G. Noll, b and Frank W. Putnamc, The impact of sexual abuse on female development: Lessons from a multigenerational, longitudinal research study, ncbi.nlm.nih.gov, (Aug. 04, 2023, 9:29 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3693773/>

¹¹ Navin Kumar, *Supra* note 07, at 05.

¹² The Roots of Gender Inequality in India by D. Amutha :: SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906950 (last visited Apr 5, 2020)

¹³ Abdullah-Khan, N. (2008). Introduction. In: Male Rape. Palgrave Macmillan, London. https://doi.org/10.1057/9780230227651_1

¹⁴ Pranzal Jha, Gender equality v. gender neutrality, Ipleaders, (Aug. 04, 2023, 9:29 PM), <https://blog.ipleaders.in/gender-equality-v-gender-neutrality/>

¹⁵ [Prod-media.coolaustralia.org](https://prod-media.coolaustralia.org), https://prod-media.coolaustralia.org/wp-content/uploads/2017/05/06164127/SRF_Y9_rightsfreedomstheLaw_presentation.pdf, (last visited Aug. 6, 2023).

¹⁶ wikipedia, https://en.wikipedia.org/wiki/Gender_neutrality, (last visited Aug. 6, 2023).

¹⁷ uksaysnomore, <https://uksaysnomore.org/learn/domestic-abuse/stalking/>, (last visited Aug. 6, 2023).

In recent years, there has been a growing movement to create more gender-neutral laws in order to promote equality and eliminate discrimination. This movement has led to changes in many areas of the law, including family law, criminal law, and civil rights law

GENDER NEUTRAL LAW IN INDIA:

In India, there have been several efforts to introduce gender-neutral laws to promote equality and protect the rights of all individuals.

One of the significant gender-neutral laws in India is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013,¹⁸ which covers all employees regardless of their gender identity. The act provides a mechanism for filing complaints of sexual harassment at the workplace and sets guidelines for dealing with such complaints.¹⁹

Additionally, the Transgender Persons (Protection of Rights) Act, 2019,²⁰ recognizes transgender persons as a third gender and provides for their protection against discrimination and violence. The act also mandates the provision of welfare measures and benefits for transgender persons.

However, there is still a long way to go in India to ensure full equality and protection for individuals of all gender identities. Many discriminatory laws, practices, and attitudes persist, particularly against those who identify as non-binary or gender non-conforming. Efforts to introduce and enforce gender-neutral laws and policies are critical in promoting equal rights and opportunities for all individuals, regardless of their gender identity.²¹

STANCE OF GENDER-NEUTRAL LAW IN OTHER COUNTRIES:

Gender-neutral laws and policies vary widely across different countries and regions, reflecting differences in cultural, social, and political contexts. Some countries have made significant progress in promoting gender equality through the implementation of gender-neutral laws and policies, while others still have a long way to go.

¹⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No 14, Acts of Parliament, 2013 (India).

¹⁹ <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>, (last visited Aug. 6, 2023).

²⁰ The Transgender Persons (Protection of Rights) Act, 2019, No 40, Acts of Parliament, 2019 (India).

²¹ Shamayeta Bhattacharya, Debarchana Ghosh, and Bandana Purkayastha, 'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community, ncbi.nlm.nih.gov, (Aug. 04, 2023, 9:29 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9555747/>

In countries like Canada, for example, the Canadian Human Rights Act and the Canadian Charter of Rights and Freedoms protect individuals from discrimination on the basis of gender identity or expression. The country also has a federal law that explicitly recognizes non-binary gender identities.²²

Similarly, in several European countries such as Sweden, Denmark, and Iceland, gender-neutral pronouns and language are commonly used in official documents and public spaces. These countries have also introduced gender-neutral laws and policies in areas such as parental leave, education, and healthcare to promote gender equality.²³

In contrast, some countries have been slower to adopt gender-neutral laws and policies. In many parts of the world, discrimination and violence against individuals based on their gender identity or expression remain widespread. Several countries still have laws criminalizing same-sex relationships or limiting the rights of transgender individuals.²⁴

Overall, the progress towards gender-neutral laws and policies varies widely across different countries and regions. However, the global trend is moving towards greater recognition and protection of the rights of individuals of all gender identities, and many countries are taking important steps toward achieving this goal.

WHY SUCH WOMEN-CENTRIC RAPE LAWS EXIST:

As we are aware that all the rape laws that exist in India are women-centric and we don't have a single law that even defines or includes men as rape victims except the POCSO act which only deals with rape of minor boys or boys below 18 years of age. This is high time that gender-neutral laws must be considered now, some of the reasons that there exist no gender-neutral law are:

- **PORTRAYAL OF SEXUAL VIOLENCE AGAINST MEN IN MEDIA**

Media forms a very necessary part of our life and is one of the main reasons how the youth of a country will be conditioned socially. Indians love to watch movies, that is the reason cinema is one of the main industries which contribute to our society.

²² justice.gc.ca, <https://www.justice.gc.ca/eng/csjsjc/rfc-dlc/ccrf-ccdl/check/art15.html>, (last visited Aug. 6, 2023).

²³ wikipedia, https://en.wikipedia.org/wiki/Legal_recognition_of_non-binary_gender, (last visited Aug. 6, 2023).

²⁴COE, https://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf, (last visited Aug. 6, 2023).

Nothing is funnier than a man being sexually violated or a woman being objectified and stalked and kissed without her permission, such is the taste of our audience and filmmakers have no shame in portraying these types of things in the movies. Almost every movie in the mainstream cinema shows some sort of violence against people and these scenes are supposed to be funny take for example the sexual assaults in Kambakhtishq are shown with the masculinity of the man and not as harassment, a man kisses a girl without her permission in judwaa 2 and that is supposed to be funny, similar is the case of sexual assault against man depicted in these movies for example in Badrinath ki dulhania the sexual assault on a man is a matter of laughter.²⁵ Instead of giving sympathy to the man his friends laugh at his condition where his clothes are torn apart by the perpetrators and similarly gay relationship is looked down upon in these movies. Instead of being progressive, these movies are showing the mindset of the Victorian era where males can't be weak, and it's common for women to dance in revealing clothes.²⁶

These types of scenes which are very common in the mainstream media have nourished the minds of people that males can't be raped and males are free to exercise their dominance over females. Which is very harmful to society as a whole and not only to genders. Fred Palka in his article writes about a male victim of sexual assault that when he went to the police to report his case, he was laughed upon just because he was a male and he could not defend himself against a female²⁷. This is a classic example that how human minds are conditioned by the media.

- **OPPOSITION FROM FEMINIST GROUP**

One of the main reasons that rape laws are not gender neutral is because of certain feminist groups, they argue that if the rape laws become gender neutral then it will weaken the position of women and will give undue advantage to the males^{28,29}.

²⁵ Rohitha Naraharisetty, Movies Objectify Women but Glorify Men for Sexual Adventures: Madras HC, theswaddle, (Aug. 04, 2023, 9:29 PM), <https://theswaddle.com/movies-objectify-women-but-glorify-men-for-sexual-adventures-madras-hc/>

²⁶ Claire Cohen, 'Male rape is a feminist issue: Feminism, Governmentality and male rape' (Palgrave Macmillan 2014).

²⁷ Fred Pelka, 'Raped: A Male Survivor Breaks His Silence, in Rape and Society: Readings on the Problem of Sexual Assault' 250 (Patricia Searles & Ronald J. Berger eds., 1995 Westview Press).

²⁸ Catherine Mackinnon, Liberalism and the death of Feminism' in Dorchen Leidholdtdand Jenice G. Raymond,(Pergamon press 1990),

²⁹ Plato.stanford.edu, <https://plato.stanford.edu/entries/feminism-rape/>, (last visited Aug. 6, 2023).

Feminist author Catherine MacKinnon argues that consent for sexual intercourse is not voluntary, as the parties are never in positions of equal power. She further argues that women, who claim to enjoy sexual intercourse, do so due to the social conditioning in a world of male supremacy. This argument furthers the notion of sexual intercourse being something that is done to women by men and therefore making it impossible for a man to be raped or for a woman to perpetrate rape.³⁰

Feminist author Rush opines that although some women do overpower men and they dominate and harass men but they are very few and rape can only be done by heterosexual men who always feminize their victim and the chances that women overpower or harass men are very less so it does not justify making the rape laws gender neutral³¹ although the last point raised by her that female on male rape cases are very rare is correct to an extent but we must not forget that there has been any extensive research on this topic and sexual harassment against men are highly underreported and often it is accepted in the society that males can never be raped.

What these feminist groups fail to recognize is that although it is physically difficult for women to rape men it's not impossible and although the physical hurt experienced by men must be less or no physical injury but still the mental trauma faced by any person after forceful intercourse may be very harmful to their mental health and the person may never be able to behave normal gain in their lifetime.³² This, in my opinion, is more harmful to men as they cannot complain about sexual assault experienced by him because of the social conditioning that men are powerful and society considers a man not man enough if he gets overpowered by a woman and also society laughs at such males rather than giving sympathy to them.

The law commission took the step in favor of gender-neutral law in its 172nd report in 2013 but these feminist groups resisted the movement and thus this Victorian-era law did not get any major reform in context to being gender neutral

- **ASSUMING MEN CAN DEFEND AGAINST RAPE**

³⁰ G. Chase, An analysis of the new sexual assault laws 4(4) Canadian Woman Studies 53, 54 (1984)

³¹ Florence Rush, 'Many Faces of backlash' in in Dorchen Leidholdt and Jenice G. Raymond, (Pergamon press, 1990),3

³² stanford, <https://plato.stanford.edu/entries/feminism-rape/>, last visited Aug. 6,2023).

Yes, men can defend against rape, just as anyone can defend themselves against any form of violence. Rape is a form of sexual violence that can happen to anyone regardless of their gender. It is important to note that anyone can be a victim of rape, regardless of age, gender, sexual orientation, or any other personal characteristics.

There are various self-defense techniques that individuals can use to protect themselves from rape, such as learning martial arts or taking self-defense classes. However, it is important to note that self-defense is not a guarantee of safety and should always be used as a last resort. It is also important to seek medical attention and report the incident to law enforcement if rape or any other form of sexual violence occurs.³³

Preventing rape is a shared responsibility that requires efforts from individuals, communities, and society as a whole. This includes promoting education and awareness about rape, challenging harmful gender stereotypes and attitudes, and holding perpetrators accountable for their actions through legal means.³⁴ It is important for everyone to work together to create a safe and supportive environment for all individuals, regardless of their gender.

- **PRESUMPTION OF FOREVER CONSENT FROM MEN**

The presumption of consent from males is a problematic concept that assumes that men are always willing to engage in sexual activity and cannot be victims of sexual assault. This assumption is not only incorrect but also harmful as it reinforces gender stereotypes and can lead to underreporting of sexual assault by men who may feel ashamed or afraid to come forward.

It is important to recognize that sexual assault can happen to anyone, regardless of their gender or sexual orientation. Consent must always be freely given, enthusiastic, and informed, and it is the responsibility of all parties involved to ensure that there is clear communication and mutual understanding before engaging in any sexual activity³⁵.

The presumption of consent from males is not supported by the law, as sexual assault is a crime regardless of the gender of the victim or the perpetrator. All sexual activity must be based on

³³Pino & Meier, 1990; Coxell& King, 1999

³⁴

ohchr.org, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf>, last visited Aug. 6, 2023).

³⁵ Curtis vs State, 223 S.E. 2d 721

clear and affirmative consent, and any form of coercion, manipulation, or force is considered sexual assault.³⁶

It is crucial to promote education and awareness about consent and healthy relationships to prevent sexual assault and create a safe and supportive environment for all individuals, regardless of their gender. This includes challenging harmful gender stereotypes and attitudes that contribute to the normalization of sexual assault and promoting a culture of respect and consent.

REASON TO BRING IN GENDER-NEUTRAL LAWS:

There are not only one but many reasons to bring in gender-neutral laws in India as the cases of men getting sexually assaulted are increasing day by day. These perpetrators of sexual assault are not only directed towards one single gender but we mean male-to-male rape, female-to-male rape, or even rape committed towards transgenders. Sometimes there comes instances that females abet a male to commit sexual assault on different males. Thus some of the reasons to include gender-neutral rape laws are as follows:

- **IMPOSSIBLE FOR A WOMAN TO RAPE MAN BIOLOGICALLY**

One of the very famous arguments that are often raised against gender-neutral rape or woman-on-man rape is that it is biologically impossible for a woman to rape a male as to have intercourse one must feel aroused and should have an erection and that can't be obtained forcefully, but many researches have shown that erection can be obtained forcefully also and there is no need of any sort of arousal as it a natural body process.

This is the reason that even in countries where gender-neutral law is recognized male rape cases are highly underreported as the defense lawyers often use the reason that the victim was not forced as he had an erection and many men think that the table would be turned if they report the case. Similarly, when a man forcefully penetrates into a woman there is a secretion of lubrication fluid in the vaginal area of the woman and that secretion does not imply the consent of the woman, similarly, erection during intercourse whether forceful or conceptual is a natural process and it does not imply consent. Erection in males does not occur because of sexual

³⁶Hines and Douglas, 2010; Mills et al, 2006

arousal only but can also be achieved because of mixed emotions like fear, anger, excitement, etc.³⁷

majority of male rape victims do not report the crime due to feelings of confusion or guilt because they ejaculated or had an erection during the assault. Although this has different views in different countries, English law regard erection as an implied consent of the male during sexual intercourse but the USA has long held that getting erection or ejaculating during intercourse is highly irrelevant and would not imply consent of the victim. This is the reason that in USA the males report cases of sexual violence against them with more confidence. Thus every country should consider this biological reason and should move past this belief that erection or lubrication forms a part of consent.

- **EQUALITY UNDER GENDER NEUTRAL LAW**

Equality under gender-neutral law means that all individuals are treated equally and without discrimination based on their gender identity or expression. Gender-neutral laws and policies aim to promote equal rights and opportunities for all individuals, regardless of their gender.

Gender-neutral laws can address a wide range of issues, such as employment, education, healthcare, housing, and public accommodations. For example, a gender-neutral employment law might prohibit discrimination on the basis of gender identity or expression in hiring, promotion, or termination decisions. A gender-neutral education policy might ensure that all students, regardless of their gender identity or expression, have access to education and are not discriminated against in school settings.

Gender-neutral laws can play an important role in promoting gender equality by recognizing and protecting the rights of individuals of all gender identities. They can also help to challenge harmful gender stereotypes and attitudes and promote a culture of respect and equality.

However, achieving true equality under gender-neutral laws requires ongoing efforts to address systemic inequalities and discrimination. This includes promoting education and awareness about gender and sexuality, challenging harmful gender stereotypes and attitudes, and creating

³⁷ David Archard, 'The wrong of Rape(2007) 57 The philosophical Quarterly 374

a safe and supportive environment for all individuals, regardless of their gender identity or expression.

- **RECOGNITION OF MALE VICTIM**

US Department of Justice conducted a survey and found that a significant number of males i.e. 17% said that they were coerced to have sex at least once in their lifetime. One of the main ways by which men were coerced was found to be intoxication, seduction, and psychological pressure³⁸.

The main focus of every survey conducted to date is on the male as perpetrators and females as the victim but these are changing in many countries, especially the USA and almost every European country the situation in India remains stagnant and no major development has been done in the recent times in the context of gender neutrality of rape laws.

In the famous case of Regina v Belton,³⁹ the facts were that the female volunteer for the prison board was convicted of misconduct for engaging in sexual relations with prisoners. Thus the English court took a wide view and considered that a woman can be in a dominant position where she can overpower a man sexually. The Kerala high court also made a very strange observation recently that women are not prosecuted for reneging on a promise to marry while men are. If a woman tricks a man into a false promise of marriage she can't be prosecuted but a man will be prosecuted for the same offence. This is one of the first times that an Indian court made this observation. feminist lawyer Flavia Agnes⁴⁰ opined on this observation that it would make it difficult for women survivors to file rape cases as it would lead to a counter case and thus would defeat the purpose of the law. But the author here would like to point out that the purpose of the law is getting defeated in the present scenario and the situation would be a lot more practical if the law becomes gender neutral as it is against the right to equality enshrined in the constitution that we make a law based on gender where a male is convicted for an offense but a woman is not convicted for the same offense. This is rather arbitrary.

Here we do not condone rape and that no one should be punished but we argue that after a sexual assault a human brain goes through much mental trauma and everyone regardless of

³⁸ Crime in United States: Uniform Crime Reports, US Department of Justice 2015

³⁹ Regina vs Belton [2011] 1 cr App Rep 20

⁴⁰ Flavia Agnes, Law and Gender equality , The politics of women rights

gender must be punished if they commit a sexual offence. Males and females both should be considered as victims as well as perpetrators which would make the law more practical and sensible. Apart from this we should also provide adequate mental support to rape survivors be they female or male we know that female rape survivors are looked down upon the society and male rape survivors are laughed upon even in European countries where gender-neutral rape law exists from over the last 3 or 4 decades. Thus not only recognition is important but proper awareness and education on this topic are also needed.

SOLUTION:

Stating the problems related to gender-neutral laws and giving reasons for such problems is not a big task. The main challenge is to give the proper solution for such a problem. A solution that would not offend any gender of persons along with giving protection to all genders. A solution that would not loosen the position of women in rape-related laws, as it is a fact that women are more likely to be a victim of rape but it does not mean that men can not be a victim. further some effort should be given to reduce the misuse of rape-related laws by women. Some of the solutions are:

- **CHANGES IN GENDER-NEUTRAL LAW TO IMPLEMENT IN INDIA**

Implementing gender-neutral laws in India requires significant changes to the existing legal framework, as well as societal attitudes and norms that perpetuate gender-based discrimination and inequality. Here are some potential changes that could be made to implement gender-neutral laws in India:

Amend existing laws: Many existing laws in India are gender-specific, such as those related to marriage, divorce, and inheritance. These laws need to be amended to make them gender-neutral and inclusive of all individuals, regardless of their gender identity or expression.

Introduce new laws: New laws need to be introduced to address gender-based discrimination and violence, such as sexual harassment, assault, and domestic violence. These laws should be gender-neutral and provide equal protection to all individuals.

Education and Awareness: Education and awareness programs need to be implemented to promote gender equality and challenge harmful gender stereotypes and attitudes. This includes promoting education about gender and sexuality, as well as creating safe spaces for individuals of all gender identities.

Access to Justice: Access to justice needs to be improved for individuals who experience gender-based discrimination and violence. This includes providing legal aid and support to victims of gender-based violence and ensuring that law enforcement officials are trained to recognize and respond to cases of gender-based violence.

Employment and Workplace Policies: Workplace policies need to be introduced that promote gender equality, including policies related to hiring, promotion, and equal pay for all individuals, regardless of their gender identity or expression.

Health Policies: Health policies need to be introduced that address the specific health needs of individuals of all gender identities, including policies related to gender-affirming healthcare and mental health support.

In summary, implementing gender-neutral laws in India requires significant changes to the legal and societal framework. It requires a concerted effort from policymakers, civil society organizations, and individuals to promote gender equality and challenge harmful gender stereotypes and attitudes

- **GENDER-SENSITIVE TRAINING OF PUBLIC AUTHORITIES**

Only bringing a change in the existing law won't do any great without proper training of public authorities and the public. Gender-sensitive training should be added to the school programs and must be given to students at the primary level. So that the victims be they male, female, or any other gender don't feel any sort of hesitation in reporting the case.

Police authorities must also be given proper training in this context as they are generally the first persons who the victim approach after any sexual assault has been committed on them. There have been many cases where the police authority were seen talking rudely to the rape victims and were also seen laughing when any male victim approach them. This improper communication skill and mistreatment of the victims only add to their misery and thus many victims refuse to report cases.

In the Bhanwari Devi rape case, the police officials demanded the submission of the skirt which the victim was wearing during the time when she was raped by some men, she was wearing that same skirt at the time of reporting also thus she had to wear her husband's turban as she had no alternative piece of clothing and further she was examined by the doctor after 48 hours

of rape but Indian law requires that the victim must be examined by a doctor within 24 hours of the offense. Thus the above case is a classic example that how ill-trained the police and other public officials are when it comes to sensitive topics like rape and sexual harassment⁴¹.

The words of Eminent Jurist Justice VR Krishna Iyer come to mind here when he warned in *Rafiq v State of UP*⁴² that ‘the strategy for a crime-free society should not be draconian severity in sentencing but institutional sensitivity, processual celerity and prompt publicity among the concerned community

CONCLUSION:

India has been dealing with a serious problem of sexual violence against women and men for decades and there have been some efforts to address the issue of sexual violence against women but still, there has been no effort in addressing the issue related to sexual offence against men. The definition of rape in the Indian Penal Code is limited to forced sexual intercourse with a woman, and further excludes all other sorts of sexual assaults to other genders. In short, it does not identify males as victims of sexual assault. This narrow definition of rape has resulted in the misuse of rape laws in India and further, because the stereotypical notion that rape of men is a topic of humor has resulted in underreporting of male rape cases. Thus we don't have any official data which can tell us the ratio of men getting sexually assaulted.

The need for gender-neutral laws has been emphasized time and again. The definition of rape needs to be expanded to include all sorts of violence including non-penetrative acts against all genders further there should be equal punishment for all perpetrators, regardless of the gender of the victim or perpetrators. It must be noted and kept in mind that sexual violence affects physically and mentally to everyone. It is also a leading cause of depression amongst people of all genders. Thus the notion that a man can handle this assault is no defense.

The recent amendment to the Indian Penal Code in 2018 was a step in the right direction as they recognized the need to widen the scope of the definition of rape and provide for stricter punishment. But there is still a long way to go to ensure that rape laws must be gender-neutral. In conclusion, the female-centric rape laws have failed to protect the male victims further it has punished a lot of innocent males as some women openly misuse these female-centric laws, which traumatizes the life of that innocent male and further ruins his life thus it is imperative

⁴¹ *State of Rajasthan vs Smt Bhanwari Devi* 1997 (1) WLN 625

⁴² *Rafiq vs State of UP* 1981, SCR (1) 402

that the government should take some steps to create a legal framework that is truly gender neutral and protects all victims of sexual violence. This would not only ensure justice for the victims of sexual violence but will also send a strong message that sexual violence in any form is unacceptable and will not be tolerated



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