

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 2

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# A Step towards Gender Neutral Laws: A Need of the Hour

---

JONUS ISSAC D'SOUZA<sup>1</sup>

## ABSTRACT

*Gender Neutral Laws are those laws that do not discriminate on the basis of gender or sex, and treats individuals of all genders equally under the law. It is a common misconception that males are always accused of being the perpetrators and that women are always the victims, however, even men and transgenders can also be victims of sexual offences and false accusations. Globally there is a growing necessity and recognition for laws becoming gender neutral and this is becoming more widely acknowledged by the governments and the society. Regardless of gender a crime can be committed by a man or a woman. The number of crimes committed against men and transgenders is on the rise and it is something that the government should look upon. According to the current Indian legislation for a sexual offence to be committed it requires a male to be the perpetrator and female to be the victim. This exclusivity of gender causes grave injustice since it leaves out men and transgenders as being victims of these offences which is discriminatory in nature. The current law is inadequate and discriminatory leaving the victims without legal recourse. There arises a need to make laws gender neutral which will bring equality and abolish the idea of superiority of one gender upon the other. This article focuses on the various laws in the Indian Penal Code 1860 and other legislations that have been framed lacking the concept of gender neutrality which focuses on providing protection to victims of a particular gender.*

**Keywords:** Gender Neutral, Discriminatory, Sexual offence, Rape laws.

## I. INTRODUCTION

Gender inequalities constitute one of the most prominent manifestations of inequality. Gender neutral laws are a critical component of efforts to achieve gender equality. Gender Equality is of enormous significance and has many implications because gender equality impacts every member of the community as a whole and it shapes the basic foundation of a just and equitable community. Women have been victims of oppression, violence and various types of cruelties by men since time immemorial. Just and equitable laws are in need of the hour for protecting and developing the society. Keeping in mind the oppression and violence that women undergo, the government have introduced several laws for protecting them. It is not just women who need

---

<sup>1</sup> Author is a student at V.M. Salgaocar College of Law Miramar Panaji, Goa, India.

protection from various crimes like sexual offences, homicide etc., men and transgenders need it too. In India the current regime of sexual offences is gender biased. Such sexual offences against victims of other genders cause immense and unimaginable trauma. Such victims are not in the position to report such heinous crimes because the law does not provide for such protection and that their reputation will get affected in the society. At times victims are unable to bear such trauma and sufferings which ultimately makes the victim to end their life which is a very unfortunate situation in today's time.

The Constitution of India makes provision for gender equality. Article 14<sup>2</sup> speaks about right to Equality. It states that no person shall be denied equality before the law or the equal protection of the laws within the territory of India. Article 15 prevents the State from discriminating any citizen on grounds of religion, race, caste, sex, place of birth. It mentions that the constitution of India gives power to the legislature for creating special provisions for women and children<sup>3</sup>. In spite of these concrete provisions gender biased laws is still a prevalent issue in today's time. It is also astonishing to know that other than rape laws various other sexual offences such as Voyeurism, Stalking, Outraging Modesty, Disrobing, Cruelty, Dowry Death, Sexual harassment are gender biased in India. The Definitions of the above offences makes men as the perpetrator of offences and women as the victim. It eliminates the possibility that women could be the perpetrators and men could be the victim.

There are many cases whereby gender biased laws are misused by women in a very extreme way in India. Very instance of Section 125 of Criminal Procedure Code<sup>4</sup> which speaks about maintenance of wives, children and parents. Women falsely portray to the court that they cannot maintain herself, also concealing the fact that they are already holding a job. Their main intention is only to extract money and make their husband undergo the burden of trail.

Also, with respect to sexual harassment at workplace, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act enacted in 2013 is gender biased aiming to protect only women against sexual harassment of women at workplace.

## **II. WHAT IS GENDER NEUTRALITY?**

Oxford Dictionary defines Gender Neutrality as "Suitable for or shared by people of both sexes; not making a difference between men and women".

In simple terms it means prohibiting discrimination of an individual based on the gender or sex.

---

<sup>2</sup> Constitution of India, 1950, Art. 14

<sup>3</sup> Constitution of India, 1950, Art. 15(3)

<sup>4</sup> Code of Criminal Procedure 1973, Section 125

It emphasizes on the equal treatment of an individual irrespective of its gender. Its main aim is to make gender specific laws gender neutral.

**Arvind Narrian (2012)** talks about gender neutrality from 3 aspects<sup>5</sup>:

- 1) Neutrality with respect to the victim.
- 2) Neutrality with respect to both the perpetrator and the victim in custodial situations.
- 3) Neutrality with respect to the perpetrator.

#### **(A) Need for gender neutral laws**

Gender Equality is an important aspect to promote Equality.

- i. It helps promote gender equality by ensuring that all individuals have equal access to legal protection and rights regardless of their gender or sex.
- ii. Laws that are gender neutral can support the fight against negative gender norms and stereotypes that support discrimination and inequality.
- iii. Gender neutral laws contribute to the development of a more inclusive and equitable society by recognising and appreciating the contribution and experiences of individuals of all genders.
- iv. Gender neutral laws can also help benefit the transgender individuals who may face significant legal and social barriers due to their gender identity.

### **III. GENDER BIASNESS UNDER THE INDIAN PENAL CODE 1860**

The Indian Penal Code 1860 is the official Criminal Code of India. The Code addresses all substantive aspects of criminal law that is it defines the law and prescribes the punishment if a person commits an offence. Many laws enshrined in this code are gender biased.

#### **1. Rape Laws In India: Section 375 Of IPC 1860<sup>6</sup>**

As quoted by McMullen “No person is immune from the human potential to rape or be raped”. Rape can happen to any gender by any gender. The word rape is derived from the Latin term “Rapio” which means to seize<sup>7</sup>. It is the fundamental duty of the state to provide a safe

---

<sup>5</sup> *The Criminal Law (Amendment) bill 2012: Sexual assault as a gender neutral offence* : (2012) *Economic and Political Weekly*. Available at: <https://www.epw.in/journal/2012/35/web-exclusives/criminal-law-amendment-bill-2012-sexual-assault-gender-neutral> (Accessed: April 30, 2023).

<sup>6</sup> Indian Penal Code 1860, Section 375

<sup>7</sup> *Section 375 of IPC: An overview* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-5395-section-375-of-ipc-an-overview.html> (Accessed: April 30, 2023).

environment at all times and for all citizens in a country. Under Article 21<sup>8</sup> of the Indian constitution rape is considered to be violative of a victim's fundamental right.

Section 375 of the Indian Penal Code defines rape. It defines it as "A man is said to commit rape if he....." Which expressly shows that the law is gender biased. Section 376 of the Indian Penal Code mentions the punishment for the same. Since the victim's body, mind and privacy are violated, it is considered to be the most morally repugnant and physically dreadful crime in the society. Section 375 is based on the notion that a female can only be the victim of rape and the perpetrator is always a male.

The POSCO Act 2012<sup>9</sup> was enacted to protect children from various sexual offences like sexual assault, sexual harassment and pornography. The Act defines a child as "any person below the age of eighteen years". The word "any" specifies and denotes equality for all genders. No gender is specifically mentioned in this definition.

It is widely affirmed that human rights should become an essential practice and doctrine to regulate state laws, especially sexual assault rules in its criminal justice system<sup>10</sup>. In spite of many developments in the Criminal justice system the definition of rape still recognises men as perpetrator and female as the victim. Over the years there have been many debates that even males and transgenders are victims of rape in India. Also, there are many Public Interest Litigations (PILS) filed in the High courts and Supreme Court for making rape gender neutral. In 2018 a plea challenging the constitutional validity of section 375 of IPC was filed on the ground that the provision is not gender neutral. The Apex court declined to entertain the PIL as the issue was in the realm of the Parliament.

The Supreme Court in one of the case observed that "While a murderer destroys the physical frame of the victim, a rapist **degrades and defiles the soul of a helpless female**"<sup>11</sup>. The statement made is gender biased as it mentions that only females can be victims of rape.

#### IV. HISTORY AND DEVELOPMENT

During the pre -19<sup>th</sup> century there were many issues that led to the decline of status of women. They did not enjoy their legal rights. Women were subject to social evils like Sati and Jauhar. India was one of the male dominated society in the past, also many women went under grave

---

<sup>8</sup> "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

<sup>9</sup> The Protection of Children from Sexual Offences Act, 2012

<sup>10</sup> Cclsnluj, ~ (2020) *Gender neutral rape laws: Need of the hour*, *The Criminal Law Blog*. Available at: <https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/> (Accessed: April 30, 2023).

<sup>11</sup> Tulshidas Kanolkar Vs. the State of Goa 2003 Appeal (Cri) 298

pain and sufferings at the hands of men for various crimes like domestic violence, sexual assault rape etc. At a later stage even, men were victims of such heinous crimes. But however, the position of women changed during the 19<sup>th</sup> century. During this time women actively participated and worked towards altering and changing gender realities. In today's time, we live in a society, the patriarchal notions that dominate the social structure have an impact on our daily behaviours, emotions and ideas. In the Indian society there is a notion that males are breadwinner and women are homemakers which was the result for patriarchal norms<sup>12</sup>. However, with time role of male and female play an important role in bringing a balance in the society.

The scope of rape laws has been widened through various amendments of laws and judgements passed. The Infamous case of **Tukaram and Anr Vs. State of Maharashtra**<sup>13</sup> commonly known as the Mathura Rape Case, brought about radical changes in rape laws in India. In this case a girl named Mathura was raped by 2 policemen. The Apex court had acquitted the accused which led to protests, resentment, agitations demanding amendment of the existing rape laws. A law that protects a victim's rights and dignity was in need of the hour. This resulted in the Criminal Law (Amendment) Act, 1983 being passed.

The Law Commission of India passed its 172<sup>nd</sup> Law Commission Report in the year 2000 which recommended that the rape law must be gender neutral. It is argued that the principles of equality before law and equal protection of rights enshrined as fundamental rights in our constitution must be applied here as well<sup>14</sup>.

In the case of **Sudhesh Jhaku Vs. K.C.J & Ors**<sup>15</sup>, a six-year-old child was being sexually abused by her father and his friends. In this case the Court had stated that rape should be a gender-neutral crime rather than just a crime against women.

The horrendous Delhi gang rape case also commonly known as **NIRBHAYA CASE**<sup>16</sup> where a paramedical student was repeatedly and brutally gang raped in a moving bus as a result she succumbed to her injuries. This case was the driving force behind the Criminal Law (Amendment) Act, 2013. By this amendment, the definition of rape was widened. A committee known as Justice Verma Committee was constituted in 2012 which proposed and recommended amendments to India's Rape laws. It had also recommended that the law should be gender

---

<sup>12</sup> <https://timesofindia.indiatimes.com/readersblog/thoughtsthatstrikesme/breaking-patriarchy-at-its-root-31134/>> Accessed 23 April 2023

<sup>13</sup> 1979 AIR 185, 1979 SCR (1) 810

<sup>14</sup> Agnes, F. (2002). Law, Ideology and Female Sexuality. *Economic and Political Weekly*, 844-847.

<sup>15</sup> 1998 CriLJ 2428, 62 (1996) DLT 563, 1996 (38) DRJ 22

<sup>16</sup> Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

neutral for the victim but gender specific for the perpetrator. While this recommendation was not taken in consideration, the other recommendations of the Committee helped shape the Criminal Law (Amendment) Act, 2013.

## **V. CRIMINAL LAW AMENDMENT BILL 2019 – ONE STEP TOWARDS GENDER NEUTRALITY**

The Criminal Law Amendment Bill 2019 was introduced before the Rajya Sabha as a private member bill by the Senior lawyer and Parliamentarian KTS Tulsi who proposed amendments in the Indian Penal Code, The Criminal Procedure Code and the Indian Evidence Act in the sections relating to sexual offences. The Bill seeks to replace the word “man” with “whoever” in different sexual offences like rape, voyeurism, sexual harassment and stalking. This will ensure protection to all individuals irrespective of their gender.

Mr. KTS Tulsi in an interview said that *"Law needs to be balanced. The balance has been disturbed. All sexual offences should be gender neutral. Men, women, and other genders can be perpetrators and also victims of these offences. Men, women and others need to be protected"*.<sup>17</sup>

### **(A) Recent incidents**

- i. Four women rape a man in jalandhar<sup>18</sup>

The man claimed that he was drugged and kidnapped in a car allegedly by four young girls in Jalandhar. He said the girls took turns to rape him after he was blindfolded and his hands tied behind his back.

- ii. Transgender gang raped in bhiwandi<sup>19</sup>

Two youths were booked for raping a 19-year-old transgender at a secluded place at night in Bhiwandi.

### **(B) Reasons For Gender Neutrality In Rape Laws**

- i. Inclusivity: Gender-neutral rape laws acknowledge that anyone, regardless of gender, can be a victim of sexual assault. By using gender-neutral language, the law recognizes

---

<sup>17</sup> *Bill to make sexual crimes gender neutral introduced in Parliament (2019) India Today*. India Today. Available at: <https://www.indiatoday.in/india/story/bill-to-make-sexual-crimes-gender-neutral-introduced-in-parliament-1568504-2019-07-13> (Accessed: April 30, 2023).

<sup>18</sup> *Jalandhar: Man alleges he was kidnapped, gang-raped by four girls in their 20s (2022) TimesNow*. Available at: <https://www.timesnownews.com/mirror-now/crime/jalandhar-man-alleges-he-was-kidnapped-gang-raped-by-four-girls-in-their-20s-article-95732303> (Accessed: April 30, 2023).

<sup>19</sup> *Bhiwandi: Two people booked for gang-rape of transgender: Wwww.lokmatimes.com (2023) Lokmat English*. Available at: <https://www.lokmatimes.com/maharashtra/bhiwandi-two-people-booked-for-gang-rape-of-transgender> (Accessed: April 30, 2023).

that everyone should be protected from sexual violence.

- ii. Equality: Gender-neutral rape laws treat all victims and perpetrators equally, regardless of their gender. This ensures that all victims receive the same level of protection under the law, and all perpetrators are held accountable for their actions.
- iii. Addressing underreported cases: Gender-neutral rape laws may encourage more victims to come forward and report sexual assault, particularly male victims who may feel stigmatized by traditional gendered language.
- iv. Addressing same-sex rape: Traditional gendered rape laws may not adequately address same-sex rape cases. Gender-neutral language ensures that all forms of sexual assault are recognized and punished under the law.
- v. Modernization: Gender-neutral rape laws reflect the changing societal attitudes towards gender and sexuality.

It is important to note that the adoption of gender-neutral language in rape laws does not mean that the law is blind to the fact that sexual violence disproportionately affects women and other marginalized genders. Rather, it seeks to provide a more inclusive and equitable legal framework for all victims and survivors of sexual assault.

## **VI. SECTION 498A OF IPC 1860 – HUSBAND OR RELATIVE OF HUSBAND OF A WOMAN SUBJECTING HER TO CRUELTY**

This section defines that if the husband or the relative of the husband of a woman subjects such woman to cruelty would be punished with imprisonment for a term which may extend to 3 years and shall also be liable for fine.<sup>20</sup>

This section is considered to be one of the most misused legal provisions in the present times. The provision itself mentions that it is gender biased mentioning that only women can be subjected to cruelty and not men.

In the case of **Preeti Gupta Vs. State of Jharkhand**<sup>21</sup>, it was observed by the Supreme Court that most of the cases filed under 498A of IPC 1860 are filed in the heat of trivial issues without proper deliberation. The Apex court also stated that they come across large number of complaints which are not bona fide and which are filed with oblique motive.

It is said that many women misuse this section for person gains, they use it as a weapon rather

---

<sup>20</sup> Indian Penal Code 1860, Section 498A

<sup>21</sup> AIR 2010 SC 3363



than a shield.

### **(A) Malimath Committee Report 2003**

Malimath Committee was headed by Justice V.S. Malimath, former Chief Justice of the Karnataka and Kerala High Courts<sup>22</sup>. As per the Malimath Committee Report 2003, the misuse of section 498A was taken into consideration. The Committee was of the view that general complaint of section 498A was to be a part of gross misuse. The Committee recommended making Section 498A as a bailable and compoundable offence.

### **(B) The National Crime Records Bureau (NCRB) Statistics 2020<sup>23</sup>**

The NCRB report on section 498A mentions that a total of 1,11,549 cases were registered under 498A out of these 5,520 were closed citing them as false. Overall, 16,151 cases were closed by police either because they were false, there was insufficient evidence or there was a mistake of fact or law, i.e., 14.4% of cases were closed for not finding merit in the case.

## **VII. SECTION 304B – DOWRY DEATH**

As per this section, if a woman dies as a result of burns or bodily injury within a period of 7 years of her marriage, and if it is proved that there was cruelty or harassment that she suffered from her husband or any relative of the husband, or with respect to any demands for dowry, then such death will be considered as dowry death. This provision clearly shows that it is gender biased. The husband or his relatives will be liable under this section even if they have not committed such crime. This provision can be misused by allegedly creating false situations. The credibility of charges made should be thoroughly scrutinised and verified before determining and establishing the guilt.

## **VIII. CONCLUSION AND SUGGESTIONS**

All genders should have equal protection in the eyes of law. The perpetrator irrespective of its gender of such heinous crimes should be punished and the punishment should be equal for all genders. In today's world even male and transgenders are victim of such sexual offences and the Indian legislation is inadequate lacking the provision to protect the rights and dignity of such individuals. To protect the rights of men and transgenders the same laws which are already existing for the protection of women should be made gender neutral by amending the definitions

---

<sup>22</sup> Admin (2022) *Malimath Committee - objectives, recommendations and drawbacks [UPSC exam]*, BYJUS. BYJU'S. Available at: <https://byjus.com/free-ias-prep/malimath-committee/> (Accessed: April 30, 2023).

<sup>23</sup> *NCRB report 2020: Crimes against women: Cases registered V/s false; conviction vs acquittal* (2021) *Voice For Men*. Available at: <https://voiceformenindia.com/ncrb-report-2020-crimes-against-women-cases-registered-v-s-false-conviction-vs-acquittal/> (Accessed: April 30, 2023).

which will in turn ensure the safety and security of the victims. The recommendations of the Justice Verma Committee need to be taken into consideration which includes gender neutrality in rape laws to put be forth as law. Not implementing Gender neutral laws violate the fundamental rights of a citizen. Laws should be framed keeping in mind the concept of gender neutrality.

The POSCO Act 2012 makes provision for protection of a male child from sexual offences but sadly there is no provision for an adult male in any of the Indian legislation which needs to be looked upon. There are many cases where men and transgenders are subjected to sexual offences but all of these go unreported due to various legal and social reasons. Many may not be in the favour of Gender-neutral laws but only the victim who has undergone such trauma and pain of such heinous crimes know what the reality is. And these real-life instances show us that such crimes are possible to be committed irrespective of one's gender. Other than the rape laws, there are also many other laws which are in favour of women and are misused at a great extent.

There arises a need for creating awareness about gender neutrality in such offences. It is only if the society at large comes forward and fight for their rights, such a move can help achieve eradicate inequality and gender biasness. The Government should conduct Annual surveys to gather data on various offences committed which are gender biased and decide upon the gravity of abuses faced by victims. Victims should be encouraged to come forward and report such crimes. Moral support should also be provided to such victims. We hope that one day the Criminal Law Amendment Bill 2019 which seeks for Gender neutrality in sexual offences is passed and this will bring justice and equality to every individual irrespective of its gender in the society.

\*\*\*\*\*