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Gender Inequality in Rape Laws

ARADHYA SINGH¹

ABSTRACT

Gender inequality is a power gap in India among males and females. Without any doubt, on the notion that women are the most vulnerable group of society, on account of that, Indian legislation made various laws which played a pivotal role to make the country shielded for women from all heinous crimes against them. After that, we have rape laws which are wholly gender specified and considers only a woman as a victim and man as a perpetrator. Indian Penal Code definition clearly elucidates the gender biasness of Indian rape laws, which totally bents on the side of women. But after all of that, few women misuse these laws by taking the ascendancy of being a woman. The situation is grave and deserves root analysis of the circumstances that causes difficulty or hesitation from men's side. This research paper critically analyzed the jurisprudence in India with respect to sexual violence and condemned the egregious provisions of rape which specified only female as a victim, and those who avoid the instances of sexual assault on the body of male or a transgender person, where the perpetrator is female or any other transgender. And at the end it shades light on the need, to adopt the human rights-based approach by making rape laws gender neutral and give special recognition to the rights of transgenders.

Keywords: IPC, Ultra Vires, A.I.R., CrLJ

I. INTRODUCTION

(A) Overview

In modern India, Gender inequality is not just a women's issue, it also crops up with men. While avoiding the other genders and in chasing of achieving gender equality, the focus has often been on women. The Section 375 and 376² of Indian Penal code³ too be wholly based on a traditional belief that defines rape as an offence committed only by man on women. This definition was itself so controversial because of a single word 'man' that was proved to be the

¹ Author is a student at Bharti Vidyapeeth Deemed University, New Law College, Pune, India.

² Difference between art. 375 & 376 of IPC. <https://www.pathlegal.in/Difference-between-IPC-Section-375-and-IPC-Section-376-blog>.

³ Indian Penal Code, 1860 (India). Section 375 of the IPC has been amended by the *Criminal Law (Amendment) Act, 1983* (India), the *Criminal Law (Amendment) Ordinance, 2013* (India), and finally the *Criminal Law (Amendment) Act, 2013* (India). Though the *Criminal Law (Amendment) Bill, 2012* (India) also sought to amend Section 375, the said *Bill* never came to be passed by the Parliament of India.

lacunae of our Indian laws. It unreasonably classifies only women as a victim and ignores other genders in society. *Is it justified to differ any law on the basis of gender?*

Rapes was not only transpiring to fulfill sexual desires or lust of few peoples but sometimes it also pans out to show dominance & superiority of one's caste, race, ethnicity, family and acts of control & humiliation over another person⁴ and that can be anyone either a male or a female or even transgender also. Hence some peoples with orthodox or patriarchal ideologies thought that they can show their dominance over others by using sexual assault as a weapon. Today we live in a society which without any exception contemplates that- *A woman is always innocent until proven guilty and a man is always guilty until proven innocent. What type of conception is this?*

However, there are some laws such that in POCSO Act⁵, which criminalizes sexual assault against male child. But it has to be understood that the question was not only leaving stereotype thoughts about sexual offences that it can be done only against women; lawmakers need to acknowledged that Justice should be served equally to everyone not on the basis of gender or any other discrimination. Gender discrimination is the violation of Article 14 and 15 of Indian constitution.⁶

We generally ignore the transgender group which includes *hijras* and *kothis et al.*, while making any law. This is a treacherous stereotype which denies justice, liberty and right to life to few sections of society on the basis of some type⁷ of discrimination.

Why Transgender community not be included in any law related to voyeurism, stalking, eve-teasing and sexual harassment? Why are they barely recognized by Indian law and denied rights as full citizens of the country?

Transgenders are proven to be the most marginalized group of our society in any field⁸. Gender biased laws affect them the most, as crimes against them can easily be set aside. We know that there is law in 2018 which was done some good to them by making section 377 of IPC⁹ unconstitutional but they are still kept away from the rights and enjoyment which others

⁴ G Priyadarshini. Volume 18. <https://supremoamicus.org/wp-content/uploads/2020/06/A1v18-37v18.pdf>

⁵ The POCSO Act, 2012, No. 32, Acts of Parliament, 2012(India). <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf> (2013)

⁶ Aditya Anand, *Gender Neutrality: Rights of one, abrogation of another*. Academike (Dec. 2.), <https://www.lawctopus.com/academike/genderneutrality-rights-of-one-abrogation-of-another/>

⁷*Id.* at 5

⁸ Vivek D.& Clifton C.”et.al.”, *Transgender social inclusion and equality: a pivotal path to development*, NCBI (July 17,2016). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4949312/>

⁹“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

enjoy. Though Article 15(3) of Indian Constitution does allow the state government to make provisions for the upliftment of woman but it does not prevent the government from making laws to protect the interest of other sections. Even though rape on men and people of the transgender community are less perennial, they cannot be denied their right to equality.

77 countries in the world exist where laws are gender neutral now.¹⁰ On the one hand, there are countries who are moving towards gender neutrality, whereas, on the other side, in India we are facing gender inequality in every phase.

In 2013 JK Verma committee¹¹ was constituted which recommended that victimization under section 375¹² must be gender inclusive and they can be anyone i.e., male, female or transgender. Same idea was also opinionated by the 172nd Law Commission of India.¹³ Some women or social right activists are against gender neutrality, because they thought that it was anti- woman and a *backlash against feminism*.¹⁴

Gender neutral laws are the solution of this gender inequality, but not the only solution, the reason behind this, was our society, in which we live. So, if the gender-neutral laws come off in our country then there are possibilities that this would open up the opportunities for women who have already been marginalized to be more traumatized and this will defeat the very purpose of the law.

(B) Review of Literature

The impulse to view the rape narrative as exclusively that of a man violating a woman does an injustice to those whose own rape stories do not fit the typical Mould that is easiest for us to understand.¹⁵ Absolute Equality is rarely found in any country on the basis of gender, color, race, religion *et cetera*.

Agnes in her article in *Economic and political weekly Journal (2004)* writes, a Gender-neutral rape law would open up avenues for inflicting even greater trauma and humiliation to an already marginalized section (woman) and hence defeat the very purpose of reform.

¹⁰ Anshritha Rai, *Abandoned by Law*, The Indian Express (December 12, 2016 12:10:34 am) <https://indianexpress.com/article/opinion/columns/sexual-crimes-against-men-legislation-4422356/>

¹¹ See Justice Verma (Retd) Committee, *Report of the Committee on Amendments to Criminal Law* (New Delhi: Justice Verma (Retd) Committee, 2013)Google Scholar [JVC, Report]

¹² *Supra* note 2.

¹³ Law Commission of India, *172nd Report: Review of Rape Laws* (New Delhi: Ministry of Law and Justice, Government of India, 2000)Google Scholar at para 7.2

¹⁴ Patricia Novotny, *Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?* 1 SEATTLE J. FOR SOC. JUST. 743 (2003).

¹⁵ STOKES, John, "India's Law Should Recognize that Men Can Be Raped Too" *Scroll.in* (11 September 2014), online: Scroll.in <<http://scroll.in/article/676510/India's-law-should-recognise-that-men-can-be-raped-too>>>Google Scholar.

Indira Jaisingh in his essay *Bringing Right home (2014)* explains that the blunt refusal to recognize the rights of women in household (even by the courts) is now replaced by a subtler allegation of ‘misuse of law’ by women.

Pratibha Singh Patil former President of India expresses concern that instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores. It is unfortunate if laws meant to protect women get abused as an instrument of oppression.

Justice Verma Committee in 2012 favored gender-neutral laws in its report and the criminal law amendment ordinance was published in the Gazette of India. In the spirit of Gender-neutral laws, sexual harassment, voyeurism, stalking all were added to the IPC and certain amendments and deletions were made to IPC, CrPC and Evidence act.

Christine Boyle an activist ‘*Sexual Assault and the Feminist Judge*’ (1985) 1 *Canadian Journal of Women and the Law* 93, once claim that making the laws Gender – neutral would be against the feminist movement, and would be dangerous to the women community.

Turchik and Edwards (2012) said in their literature review on *Myths About Male Rape*, that men cannot be raped, “real” men can defend themselves against rape, only gay men are victims and or perpetrators of rape, men are not affected by rape (or not as affected as women are), a woman cannot sexually assault a man, male rape only happens in prisons, sexual assault by someone of the same sex causes homosexuality, homosexual and bisexual individuals deserve to be sexually assaulted because they are immoral and deviant, if a victim physically responds to an assault he must have wanted it.

Brownmiller (1975) a feminist activist in his book *Against our will- Men, Women and Rape* argues that a conscious process of intimidation by which all men keep all women in a state of fear.

Colin Gonsalves opposed this and said, the law should be discriminatory for women and if it is a little discriminatory against men, it doesn’t matter, positively discrimination in Favour of women and against men is constitutionally permissible.

Sanjay Deshpande in his journal on *Sociocultural and legal aspects of Violence against men* said that in cases where men are falsely accused of violence or dowry, a law which can address these false allegations is the need of the hour, human rights and gender equality should include both men and women.

Siddharth Narain in his article in *The Indian Express* in support of Gender inclusive law in

case of victim of rape feels that the present law denies millions of Transgender Persons, intersex persons and sexual minorities not born as women of their rights.

Catherine Mackinnon in his article, *The Sexual Liberals and the Attack on Feminism* (Pergamon Press 1990), objects to gender-neutrality on the premise that it diverts the focus away from female victimization.

Udit Malik in his book *Is India Ready for Gender Neutral Laws?* took up the plea for Gender neutral laws with respect to offences like rape, sexual harassment, domestic violence etc., which are predominantly gender- specific and assume the victimization of women alone, gender neutrality if propagated then should serve to the advantage of both the genders.

Ashima Mandala of *NGO Criminal Justice Society of India*, in Favour of gender-neutral laws says that that Section 375 violates various Articles (FR) of Indian constitution as it does not account for rape of men and Transgenders Persons.

Arvind Narrain in *India's Progress on Rape Law Throws Transgender People Under the Bus*, 429Magazine (22 April 2013), the [2013 Act was] a slap in the face for all those who believed that finally transgender persons too are equal citizens in India.

Laxmi Murthy in *Partners for Law and Development*, commented on *Criminal Law Amendment Bill 2000*, acknowledge that “[m]en too can be sexually assaulted – by men, as well as by women (in rare cases)” and that “[w]omen too are capable of perpetrating sexual assault on men”.

Statement by some feminists & queer groups such as Kalpana Mehta, Vrinda Grover, Farah Naqvi, Deepti Sharma, Kavita Krishnan, Nivedita Menon in their article *Gender Just, Gender Sensitive, Not Gender neutral rape Laws*, recommending that these laws be gender neutral makes mockery of the reality, Gender neutral provisions only strengthen those already powerful, silencing the real victims (*which is totally erroneous because it was not proven that, people in strong positions can dominate only women, they can dominate other identities as per their autonomy*). The police and legal system are part of this inequity and bias against women, evident in the huge impunity for rape in our country. Same set of statements are also presented by a few other activists (Christine Boyle, Turchik & Edwards, Catherine MacKinnon) that the making of laws gender neutral would result in degradation of women community rights which work as a backlash against feminism and men can never be raped, they are strong enough to protect them.

However, no evidence whether empirical or theoretical, regarding perceived male behavior in such sexual assaults have been adduced by these critics.

Janet Halley, a legal scholar and feminist, wrote in her book, '*Split Decisions: How and Why to Take a Break from Feminism*' (Princeton University Press 2006) that ignoring harms caused to men is steady them in the writings of several feminist groups. In contradict of this reasoning numerous studies such as a study conducted in 1989 by two American researchers comes with the idea that men reacted in a same helpless manner to the cases of sexual assault as women do.

(C) Statement of Problem

This research paper basically aims to analyze the gender inequality faced by men due to various women- centric laws in India. The problems that the research will going to address are-

- Whether gender inequality exists or not specifically in men's context?
- What are the problems facing men in society?
- What are the views and opinions which counters the making of gender-neutral laws or inside of that?
- What are the insufficiencies in current rape laws?
- When the voice is raised for gender inequality for women in all respects then why should men suffer from lack of protection available to them by law?
- Is there a need to make laws gender neutral?

(D) Object of the Study

This research paper only aims to make some reforms in existing rape laws and make them gender neutral because the protection of both men and women from rape and false rape conviction is possible only when gender- neutral laws will be implemented in the country. This study merely focuses on: -

- Why Gender equality not just about women?
- What issues and problems men's and transgenders are facing while dealing with some type of gender discrimination?
- What are the hurdles in gender sensitizing the law?
- How patriarchy proved to be a hurdle in extending the scope of laws against sexual offences, to include all genders rather than just women?
- What do they need to focus their attention on, so problems or issues are resolved?

(E) Hypothesis

1. Gender inequality is not only for women, it is a two-way street, in which men's also facing discrimination.
2. Social stigma of women is undenied reality, but this will not be the reason to deny protection to male and transgender victims.
3. The protection of all the genders from rape and false rape convictions is possible only when gender neutral laws will be implemented in the country.
4. To make laws utterly gender neutral may harm women prosecutrix, so there is a need to find a way which includes all genders rather than few women centric laws.

(F) Research Methodology

In this research paper all information relies on the application of deductive method & Survey method both, to formulate a set of hypotheses at the start of the research. The data that is used there is both primary and secondary data: -

Survey Method (primary data)- Questionnaire method- It is simply a systematic investigation conducted via an online survey in MCQ (close ended questions) format. Probability sampling method is used to select participants which involves random selection specifically targeted age 18 & older. Survey questions were designed in this way so that respondents can report directly on their own thoughts, feelings, behaviors, and these results can easily provide the reader, most accurate estimates of what is true in the population. This survey should aim to collect data that exactly what percentage of peoples really understands that gender inequality is just the women's issue or not; men's faces sexual harassment or not and is there any importance of gender-neutral laws in our country. This survey collects the evidence to prove that there is a need to alter the binary understanding of gender so as to incorporate the interests of the men and transgenders.

Deductive Method (secondary data)- The data to test the hypothesis is collected from the views and opinions of various prominent scholars, and also reviewed journal modes, social activists, politicians, laws which are already existing in the history of statutes in India with some amendments and various committees report whether in the Favour of or in against of that hypothesis, to give you the summarized view of eminent peoples, so that a reader can easily able to understand that- *Is there really a need to make rape laws Gender Neutral? Or it is only the way to criticize existing laws*

(F) Survey Report Analysis

Section 1- The effects of this survey can be either positive or negative. Sometimes what is perceived as negative stress by one person may be perceived as negative stress by another one, since everyone perceives situations differently. So, maybe this work will prove beneficial for

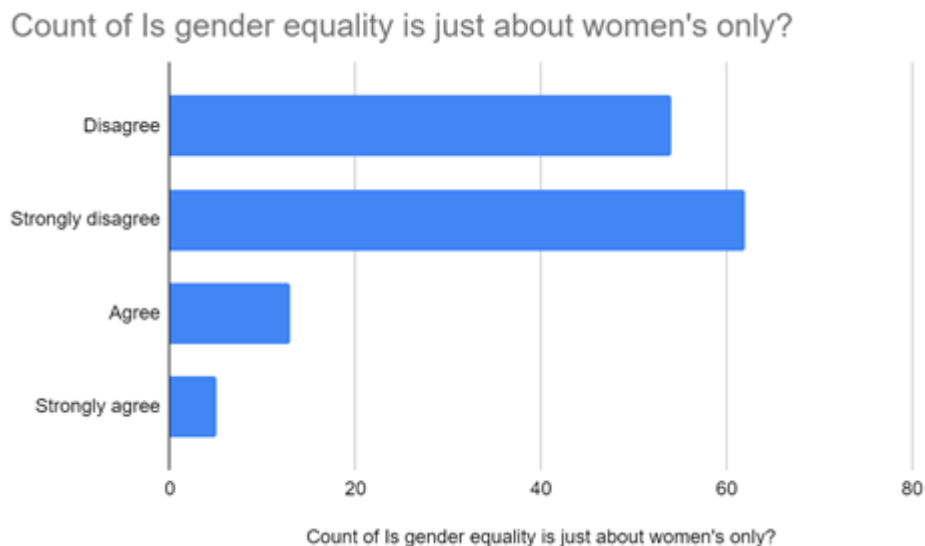
someone in pinpointing the negative effects and enable them to take some necessary steps to cope with this ball game.

Now, this survey contains 8 questionnaires which were distributed among 18+, males, females and transgenders. This survey interrogated 135 people among them 43.7% are females and 55.6% are males. However, due to sensitivity of the topic, the response rate of transgenders was only 2.7%.

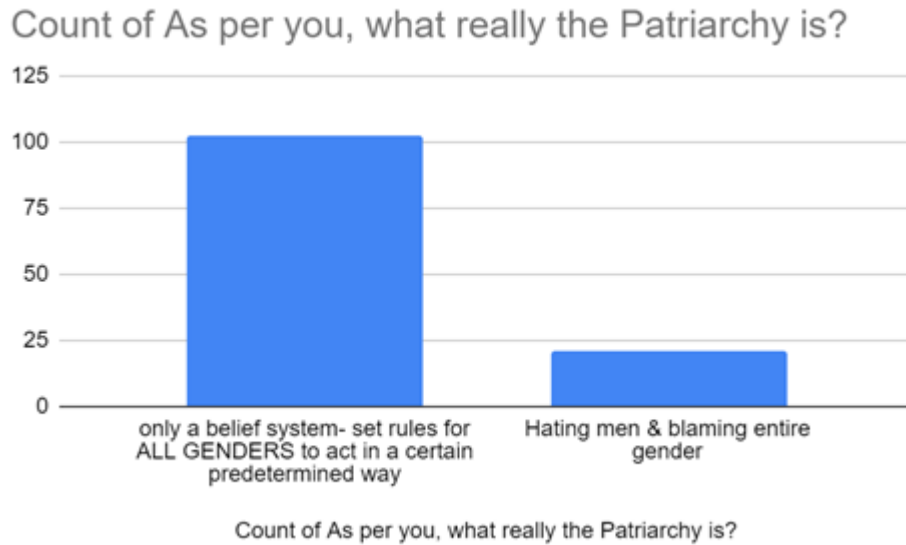
Section 2- *Eye-opening findings*

The respondents were asked to identify that, whether they agree or disagree with that statement:

- Is *gender inequality just about women only*. Of the 134 responses, 46.3% people strongly disagree with the statement that it is only the women's issue, and 40.3% only disagree that one and 9.7 % agree on this notion and 3.7% strongly agree on that. This was as follows: -

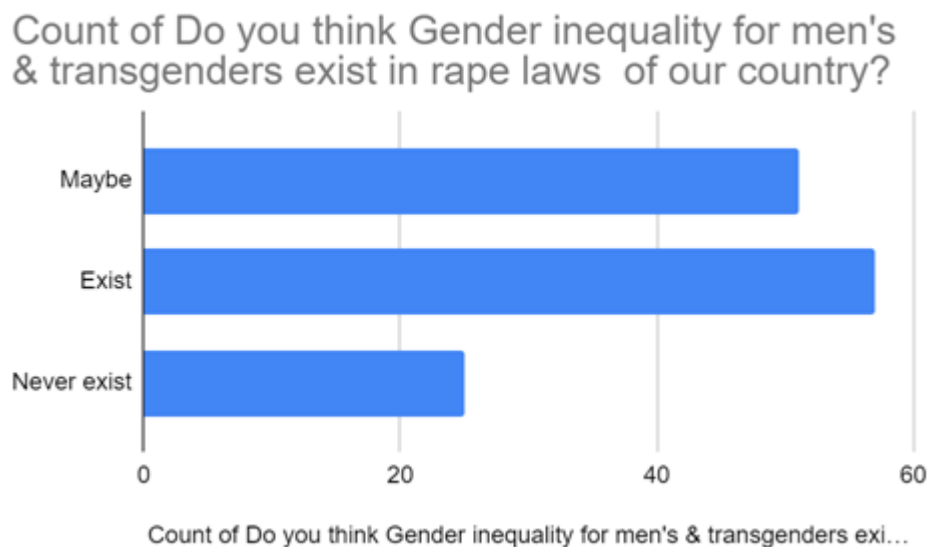


Similarly, on asking them the question that- *As per them, what really the patriarchy is?* The findings might be shocking for you that Few among the respondents still think that patriarchy is the system to hate men and blame them for everything whatever be done with the women. On the one side, among 123 responses 82.9% of people consider this system as only a belief system, and on the other side 17.1% people hate men and blame the entire gender.



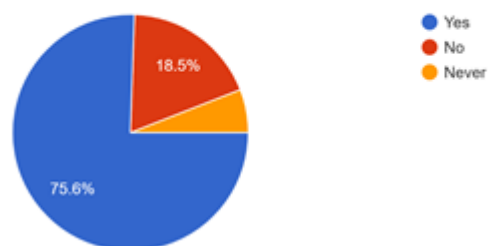
Same as that, the respondents on asking about feminism- 16.9% of individuals think that it meant to fight against men, while 83.1% say that feminism means to give equal voice to all.

And then the researcher asks them (respondents) that- *Do they think Gender inequality for men's & transgenders exist in rape laws of our country?* Among 133, 42.9% of them think that it really exists in our country and 18.8% respondents thought that this mess never existed in our society, while 38.3% people are not sure of any of that.



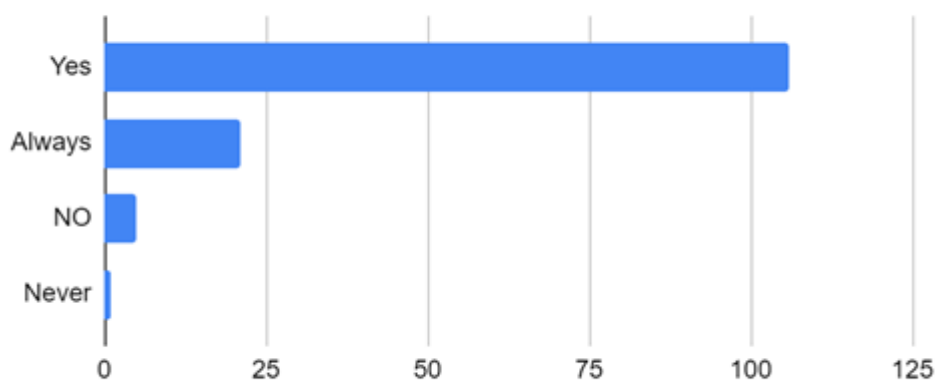
Then respondents were given a question that: *As per them Do men faces sexual harassment at anywhere whether by female or male or even transgender?* Where the findings were as follows-

According to you, Do men faces sexual harassment at anywhere whether by female or male or even transgender?
135 responses



At last, researchers asked them- *Whether there is a need of making the laws gender- neutral?* And according to the results, 76.7% of individuals agree on that and 6.1% nullify that idea.

Count of Is there a need to make laws Gender-Neutral (equal to all)?



Count of Is there a need to make laws Gender- Neutral (equal to all)?

(G) Coverage and Scope

Due to the tactful content of this research paper the survey was not able to collect responses from every class of the society and the scope of this study was limited to the small sample size of the survey, there are few more boundaries within which my research project will be performed that includes views and opinions of some prominent scholars, journals, lawyers, various committees, already existing laws in India with some amendments and with some case studies which defines you the scope of my research.

II. EVOLUTION OF RAPE LAWS IN INDIA

This chapter will trace the trajectory, from 1870s to the present day, of sexual violence in India. Women from years to years collectively agitating against the sexual violence in India to

broaden the definition of rape in India.¹⁶ First time ‘rape’ was mentioned in Indian legal structure when the IPC was written in 1860s. But till 2004 the rape was only defined as the penile- vaginal form of legislation.¹⁷

In 1972 a rape which has changed the country- Mathura Rape Case.¹⁸ It has become the one of the episodes of custodial rape in India, where Mathura a young tribal girl was raped by two cops in police station while in custody in Maharashtra. Upon pressurized by family she filed a rape case against these two cops and the trial went all the way to the Supreme Court. In this case SC upheld that at the time of rape, Mathura did not raise an alarm and had no visible marks of injury or struggle on her body because perhaps she was used to sex, she might have incited the cops to have intercourse with her. Then later on it was found that Mathura was not virgin, therefore the court ruled it as consensual sex, not rape.

After this case in 1979 four professors wrote an open letter of protest to the chief justice of India¹⁹ and several other protests started taking place in the country. They all demanding that burden of proof was to shift to the women,²⁰ that sex was not consensual. With this case, the new category of rape ‘Custodial rape’²¹ was introduced. It also makes amendment that victim’s identity should not be publicized²² and prohibited the ‘character assassination’ of rape victims in court.²³ This brought about several amendments²⁴ in the history of rape laws. Same as Mathura rape case, Nirbhaya rape case²⁵ was also proven to be the case which bring out significant changes in the history of rape laws. It introduces unprecedented provisions in the Indian Penal Code which criminalizes sexual voyeurism, stalking and amends legal provisions to protect the privacy of individuals.²⁶

(A) Gender Inequality in Rape Laws with respect to men & transgenders

¹⁶ Flavia Agnes, *Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law*, EPW, 844- 847 (2002) [hereinafter Agnes]

¹⁷ Sakshi vs Union of India (1999) S.C.C. 591 (India). <https://indiankanoon.org/doc/1103956/>

¹⁸ Tuka Ram and Anr vs State of Maharashtra , 1978 A.I.R 185 (India). <https://indiankanoon.org/doc/1092711/>

¹⁹ Baxi, U., Dhagamvar, Kelkar, R., & Sarkar, L. (1979) An Open Letter to the Chief Justice of India. <http://pldindia.org/wp-content/uploads/2013/03/Open-Letter-to-CJI-in-the-Mathura-RapeCase.pdf>

²⁰ Partners for Law in Development (PLD), “Comments by Laxmi Murthy to Criminal Law Amendment Bill 2000” at 3, online: PLD <<http://pldindia.org/wp-content/uploads/2013/04/Comments-by-Laxmi-Murthy-to-Criminal-Law-Amendment-Bill-2000.pdf>> [PLD, “Comments by Laxmi Murthy”].

²¹ The Criminal Law Amendment Act, 1983.No. 43, Act of Parliament, 1983(India)

²² Moni B. *The girl whose rape changed the country*. <https://edition.cnn.com/interactive/2013/11/world/india-rape/> & State of Punjab vs Ramdev Singh on 17 December, 2003. <https://indiankanoon.org/doc/255210/>

²³ N Jagadeesh, *Legal changes towards justice for sexual assault victims*, *Indian Journal of Medical Ethics* (Dec. 3, 2019), <https://ijme.in/articles/legal-changes-towards-justicefor-sexual-assault-victims/>

²⁴ Supra note 17.

²⁵ Mukesh & Anr vs State for Nct of Delhi & Ors on 5 May, 2017. 6 S.C.C. 1(India). <https://indiankanoon.org/doc/68696327/>

²⁶ The Criminal Law (Amendment) Act, New Delhi: The Gazette of India (2013),No. 13, Act of Parliament,2013 (India), Section 354

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

The following passage from an article in the California Law Review²⁷ which has already accepted that instances of sexual assault which do not only conform to the male- on- female paradigm occur far more frequently than one would can imagine. Though the definition of offence of rape under Section 375 of the *Indian Penal Code* (IPC) has undergone several amendments since its inception in 1860, it continues to conform to the traditional notion of rape and still not includes gender neutrality in their legal sanctity.

In her opening statement to the Justice Verma Committee²⁸ (JVC), Ms. Indira Jaising, an eminent Senior Advocate in India, labelled this move as *unacceptable since rape was to be always characterized as a crime constitutive of patriarchy, and therefore, gendered.*

After the passing of Criminal Law amendment act 2013²⁹, Judge Baruah once said that, *“The debate on gender neutrality was limited to the binary of male and female and whether or not a man can be a victim of rape ... there was no consideration given to transgender victims at the time.”*³⁰ Day by day India has imposed more and more tougher penalties³¹ for rape after a series of sickening attacks on women's and girls and there's not enough is being done to protect other genders. Offenses against transgenders are punishable under *Transgender Persons (Protection of Rights) Act 2019* in which the punishment for the physical and sexual abuse of transgender people is a minimum of six months and a maximum of two years in prison with a fine, as compare to those men who found guilty of raping a woman are sentenced to a minimum of 10 years in prison, which may be extended to life.³² The death penalty can also be imposed in cases where the woman is left in a vegetative state, for repeat offenders, or the rape of a girl under the age of 12.³³ There is no comparison between woman and transgender, that which community is more vulnerable but as we see over passing the generation, women's are steadily attaining

²⁷ LEGRAND, Camille E, *“Rape and Rape Laws: Sexism in Society and the Law”* (1973) 61(3) California Law Review 919 at 941 CrossRefGoogle Scholar

²⁸ *Supra* Note 11.

²⁹ The Criminal Law Amendment Act, 2013 (Nirbhaya Act), No.22, Act of Parliament 2013 (India).

³⁰ Esha M. CNN (2020). Retrieved from <https://edition.cnn.com/2020/12/08/india/india-transgender-rape-laws-intl-hnk-dst/index.html>

³¹ The Criminal Law Amendment Act, 2018.

³² *Supra* Note 29.

³³ *Ib. at 31*

their right equal to men's, in contradictory to transgenders.

KTS Tulsi, a member of parliament, introduced a bill³⁴ which makes both victims and perpetrators gender- neutral which was not taken further. She said in once her statement that, *"The intention of the Bill is not to undermine the experiences of women subjected to rape and discrimination. But, as society matures, we must develop empathy for all and this includes male and transgender rape victims,"*

The possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same, everyone's life matters and it can't be differentiated on the basis of genders.

(B) Insufficiency in existing legal rights

This point is quite critical because it nudges various laws which are already existing in favor of women. But this is totally maddening that the crime of rape was largely in plight of gender. Misuse of 498a of IPC commonly known as Anti dowry act³⁵ was also there, in which woman can put her husband or his family behind bars for treating her cruelly, there is no need to ask for dowry to be implicated in a dowry case- if this was a woman this death would have perhaps been called a dowry death by law but unnatural deaths of husbands are not recognized under any law and thus, we do not have any statistics and was rarely become the national headline or breaking news on television, it was also hardly covered by any regional newspaper of the country.

Just as men's, transgenders are also excluded from the definition of rape.³⁶ However, NALSA Judgement³⁷ gave recognition to transgenders as the third gender and proved to be the major step towards non- binary inclusion. In spite of this, only little has been done for the neglected community of transgenders and the fact remains that they are sexually harassed and assaulted without being considered as the victim in IPC³⁸. definition of rape. Hence the current laws are insufficient, and there is a need to amend the rape laws under section 375 and 376 of IPC³⁹ to be gender neutral.

³⁴ Ukkash F (Aug. 30,2020). The Criminal Law Amendment Bill, 2019- a step to bring gender neutrality in sexual offences, <http://probono-india.in/blog-detail.php?id=161>

³⁵ Digital repository of all the central and state acts. Indian Code. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=46286§ionno=498A&orderno=562

³⁶ Indian Penal Code, 1860, No. 45, Act of Parliament (1860), <https://www.indiacode.nic.in/>

³⁷ National Legal Ser. Auth vs Union of India & Ors on 15 April, S.C.C.1863, <https://indiankanoon.org/doc/193543132/>

³⁸ Indian Penal Code, 1860, No. 45, Act of Parliament (1860).

³⁹ *Supra* Note 2.

(C) Gender specific Rape Laws and Human Rights

In *State of Punjab v. Ramdev Singh*,⁴⁰ the Supreme Court observed that;

“Rape is not only an offence against the person of a woman rather a crime against the entire society. It is a crime against basic human rights and violates the most cherished fundamental right guaranteed under Article 21 of the Constitution of India.”

But despite of this the government still do nothing for the protection of men's and the peoples of third gender because they are more vulnerable to the forms of sexual harassment and humiliation and exploitation. Now, there are laws which show how the laws are women centric.

1. The Criminal Law Amendment Act 1983

The Mathura rape case in 1972⁴¹ was changed various statutes in the history of rape laws. It led to the insertion of 114a in Indian Evidence Act 1872, which presumes the lack of consent in specific situations of victims and section 228a was inserted under IPC by making punishable, to disclose the identity of the victims in rape, and also prohibited character assassination of victims in courts.⁴²

2. Indian Evidence Act 2002

The amendment in Section 155(4) Indian Evidence Act 2002 was prohibited the cross examination of rape victim, because while interrogating the case sometimes the defense or the police cops were humiliate & degrade the sexual integrity and personal space of the victim and it may be shown that the victim was of generally immoral character.

3. POCSO Act: Protection of Children from Sexual Offences 2012

Among all the acts which we discussed above and those which are yet to be discussed this was the only law that was gender- neutral and after 2013 amendment⁴³ this act also recognized other forms of penetration besides the Peno- vaginal penetration. This act criminalizes sexual intercourse with a minor below 16 years regardless of consent.

4. The Criminal Law Amendment Act 2013

This amendment was bringing out after the Delhi gang rape case in 2012. Nirbhaya rape⁴⁴ case brought several law reforms in the history of anti- rape laws and make existing laws more rigorous and stringent. This reform changes the minimum sentence from seven to 10 years and

⁴⁰ State Of Punjab vs Ramdev Singh on 17 December, 2003, <https://indiankanoon.org/doc/255210/>

⁴¹ *Supra* note 18.

⁴² *Supra* Note 23.

⁴³ *Supra* Note 28.

⁴⁴ *Supra* Note 25.

if the victim was in vegetative state or died then the sentence may increase to 20 years.

This amendment reiterated that the ‘character of the victim’ was totally irrelevant to rape cases and the age for being tried as an adult for violent crimes like rape and murder was changed from 18 to 16 in Juvenile Justice Act.⁴⁵

“In 2013 JK Verma committee⁴⁶ and 172nd law commission report⁴⁷ recommended that victimization under section 375 must be gender neutral rather than gender specific *because there are several false rape cases filed against men to take revenge or undue advantage, but later on after Nirbhaya Rape case, government shut one's eye to these recommendations and adjust its stance and gender – specific nature of rape laws was kept intact in Criminal Law Amendment Act 2013.*”

Article 14 of Indian Constitution commands the state not to deny ‘the equal protection of laws’ or ‘equality before laws’ which promotes *audi alteram partem*, when we talking about laws, equality, when our constitution says that nobody should be discriminated upon on basis of caste, creed, religion, gender- we have laws where a women can file a criminal case of mental or physical cruelty but a men can't. We have laws of domestic violence through which a women can look for protection citing physical, mental, emotional, financial, sexual or verbal abuse but a man can't and any how among the thousand's men, if one can file any case against women then he can get several criminal cases on him and become victim to perpetrator.

5. International Laws

Article 2 of Universal Declaration of Human Rights⁴⁸ asserts everyone is entitled to all freedoms and rights which are enshrined in the declaration and that too, without distinction on any ground including sex. Article 7 and Article 8 also state equality without any differentiation in international law.

International criminal law also referred rape as a gender – neutral crime which can be done with anyone, no matter what the gender is and recognizing that the sexual violence in wars and areas of conflict is not limited to women. Among so many cases *Jean Paul Akayesu*⁴⁹ was the *first case where rape committed on both men and women was penalized and first conviction of*

⁴⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament (2015), India.

⁴⁶ *JV Committee summary*. PRS India, <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>

⁴⁷ Law Commission of India, Review of Rape Laws, Report No. 172, ¶ 6 (2000).

⁴⁸ Universal Declaration Human Rights, 1948. http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-5/8_udhr-abbr.htm

⁴⁹ ICTR, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Chamber 1, 2 September 1998; footnotes omitted; <http://www.icty.org>

sexual violence and rape as crimes of genocide.

After so many provisions men are still deprived of gender-neutral laws and becoming a women friendly world.

III. THE NEED FOR MAKING THE LAWS GENDER- NEUTRAL

Is this not strange that there are various laws which work as a shield to protect women from being sexually harassed but laws to protect men from rape and false rape allegation are yet to be made. This was *ultra vires* to the article 14, 15 and 21 of the constitution. The protection of both men and women from rape and false rape convictions is possible only when gender neutral laws will be implemented in the country.

(A) Gender- Neutral Rape Laws with Respect to Men

There is the presumption through which people always see a man as a perpetrator and a woman as a victim, same as in IPC which gives the general public a belief that only men can assert dominance because of the fact that men are built stronger than women in biological aspects.

There is a case of *Bodhisattwa v. Shubha Chakraborty*⁵⁰ in which Supreme Court of India accepts the tradition that the offence of rape violates the basic human rights of men and women of right to life and liberty or right to privacy but Indian rape laws still follow the traditional notion with their stereotype masculinity stigma due to which men are expected to be strong enough to depend themselves so they cannot get sexually violated or exploited by women.

There is a survey taken by *National Crime Record Bureau of India* in 2008 according to which one married man commits suicides due to social and economic pressures, in every 9 minutes which is far more than that of women.⁵¹ There is also a survey by *National Intimate partner & sexual violence* which says that 28.6% of men in the country who experienced sexual assault every year among which 54.8% are the female perpetrators.⁵²

Sometimes the major causes of men's suicides were fake rape cases by women, Gender biased laws and no legal support system for men. *Asking money for dowry is wrong but is asking money after filing a false case against men and his family to intimidate them, is it true?*

Male rapes are prevalent and frequent but yet due to taboo attached to the male rape, it is hardly

⁵⁰ Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty on 15 December, 1995. A.I.R. 1996, SC 922, <https://indiankanoon.org/doc/642436/>

⁵¹ NCRB report 2008. <https://ncrb.gov.in/sites/default/files/suicides-08.pdf> and Vineeta Pandey, DNA, (Feb 22, 2010, 12:55 AM IST), <https://www.dnaindia.com/india/report-one-married-man-commits-suicide-every-9-minutes-1350968>

⁵² Arijit M. (2020). *Gender Neutral Rape Laws- The Need of the Hour*, The Criminal Law Blog, <https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/>

reported. The US Supreme Court observed that laws based on gender specificity are often a result of stereotypes in the society rather than informed attempts to meet legislative purposes.⁵³

(B) Gender neutral laws with respect to Transgender

Transgender is not a new concept; it has been recognized in our ancient history as well. This community has even been indicated in Ramayana and Mahabharata. Transgenders include *hijra, kothis, eunuchs, jogappas etc.*, which are of opposite sex as compare to gender assigned by birth. Though this community were recognized and given importance in our ancient customs and practices, the conditions have been deteriorating generation by generation.⁵⁴

After the pathbreaking judgement in the case of NALSA V. Union of India⁵⁵ in 2014 government passed the law which granted recognition to the transgender as persons under the ambit of Article 14 of the Indian constitution to grant the equity and equality to the transgender community and to do away with the second-grade citizen status attached to them. Even though current legislation has passed in favor of transgenders there is still a lacuna existing in the act is discrimination in sexual offences against their community. *According to our Indian constitution, Gender equality is fundamental right for everyone living in the society then why there is not a single provision in laws which can protect transgender from being sexually assaulted at anywhere by anyone whether male or female or another transgender?*

There is a report studies by PUCL- Karnataka which demonstrates the stark realities of harassment, abuse and sexual violence that form a part of the day-to-day existence of hijras and kothis in Bangalore. The findings in this report might be shocking somewhere which includes- harassment by police in public places, harassment at home, police entrapment, rape in jails.⁵⁶ This report shows you that some humans surpass their all limits which constitutes the violence of the integrity and privacy of the transgender's individuals.

As per some stacks, one in every two transgenders are sexually abused or assaulted at some point in their lives. Majority of transgender individuals are living with the aftermath of trauma and fear of possible repeat victimization. Therefore, many social activists approached the court to make gender neutral to the sexual harassment mechanisms and to pass an Anti-Discrimination Bill that penalizes discrimination and harassment on the basis of gender.

⁵³ *Ib.*

⁵⁴ 2021, BLOG, <https://www.iilsindia.com/blogs/brief-history-transgenders-india/>

⁵⁵ *Supra* Note 37.

⁵⁶ PUCL-K (2003), *Human Rights Violations against the Transgender Community*, http://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf

IV. CONCLUSION

In this research paper, the researcher makes an effort to give you the information regarding the Gender Inequality in Rape cases and also completed a survey which gives you some evidences that what others' opinions on the making of laws gender neutral.

Gender inequality is not a women issue, it happens with men and transgender too. First chapter gives you the overview of the whole concept along with the questions which the researcher tries to answer with the help of given research methods and hypotheses.

Then the second chapter explains the history of rape laws and insufficiency in these law reforms which are women- centric and it also gives you the aspect of thinking that how these laws are not sufficient in protecting the rightful victim. Which meant that, how the lobby is so biased that it turns a man into a criminal merely on a statement of women, biased laws are utterly *contra* of our Indian constitution. The second chapter also describes that how the men's and transgenders face sexual harassments and many studies and survey define that this is no rare that these genders are not facing any cruelty which the researcher concluded that, the offence of rape is that what it is, no matter who the victim is, if the crime is the same then the laws that punishing them would be same. This clears the first hypothesis that- *Gender inequality is not only for women, it is a two-way street, in which men's also facing discrimination.*

The third chapter analyzes the need for making the laws gender neutral with different angles. The first angle is with respect to males facing sexual harassment, eve teasing whether in jails, in workplace but due to taboo attached to them that men are strong enough, these cases are hardly reported and some radical feminist named male rape as rarity. This concluded that shortage of statistics doesn't makes an assumption that men's do not face any sexual assault and this also proves in the researcher's survey in which 70% of respondents thinks that men are facing sexual assault and the women's those are misusing these laws for making money or for defame others and ruined their careers and if some might misuse their laws than what about those women who in real faces sexual harassment and other offences, where they go at the time when no one able to believe easily that whether she really faces it or making some mendacious stories, i.e., if the cry of wolf is made too often as a prank assistant might not be available when the actual wolf appears. There is no doubt that women's are facing sexual harassment and their statistics is far more than that of men but for this we cannot denied the justice for men's and transgenders, and makes injustice to them. In front of law everyone has, right to live life and liberty. In the present century, when we talk about equality and coming out from gender binary norms, our stance at the same time cannot be at all patriarchal, and therefore it can't be

limited to only females. Justice should be served to women but what about justice to those who are implicated in false cases their lives ruined, their careers lost, their self-respect, dignity, status shattered. Sexual crimes can be committed by anyone, against anyone, irrespective of their gender. All this verifies the second hypothesis of the paper- *Social stigma of women is undeniable reality, but this will not be the reason to deny protection to male and Transgender.*

The second aspect is with respect to transgenders. Transgenders in our country are not even recognized as citizens till 2014 landmark ruling. This aspect concludes that the existence of transgenders rapes cannot be denied. The Supreme court in 2014 ruling says that, *"Transgenders are also citizens of India" and they must be "provided equal opportunity to grow", "The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender."* In spite of that, transgenders still don't have legal sanctity which can save them from sexual conviction. We can't even think of what they face every day by police, or mockery by some general public. Well, making mockery is the other case, it is depending on us because at somewhere at some point we are the people who considers transgender as differently. But our legislation can make such attempts which can Favour transgenders so that they can easily file their complaints whenever they face such happenings. And it can only be done when we have gender neutral laws which have potentiality to stop such crimes of sexual assault and false rape allegation on males and transgenders. It verifies the third hypothesis that- *The protection of all the genders from rape and false rape convictions is possible only when gender neutral laws will be implemented in the country.*

Generally public considers the problem of transgenders of their own and not something broader Indian society needs to fight for but we have to understand that transgenders movement for equality is as important as ours so we must have to consider them as humans, because we can't even assume what they face every day in every moment of their life, we can't change their life but being as a human we don't have to make them feel awkward and something that they are outsider of our human society and behave normally with them.

The summarization of some conclusions and recommendations are as follows-

1. Gender inequality is the concept which men and transgenders also face somewhere in their life, and it can't be denied.
2. Change the belief system of society which considers women as weaker and men's as stronger aspects of society.
3. Some women's misuse these laws to take advantage because there is no law which

can punish women in such types of situations so it is highly recommended that laws must be gender neutral.

4. The State can adopt equal proof requirements as a way forward to tackle gender-based power differentials in Indian society.
5. Give required punishment to the person responsible for sexual Harassment but at the same time if it is being misused then that punishment as well should be equally harsh for all.
6. Adopt a step-by-step approach as recommended by the JK Verma committee the rape law must be amended to make the victim gender inclusive while the perpetrator remains gender specific is the way to go for India. It ensures protection to men's and transgenders community from homosexual rape and it protects women from counter complaints against them. As various feminists, queer groups and individuals put it, the laws must be, Gender Just, Gender Sensitive, NOT Gender Neutral Rape Laws.
7. Our legislation has to include women in cases of gang rape or abetment of rape because it can be from both side whether male or female and each type of perpetrators of sexual assault must be handled separately.
8. Laws for transgenders make separately so that they cannot face sexual harassment at anywhere or while complaining their report in police stations, and these laws must be included in basic training of police officers
