

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# Gender Neutrality of Sexual Offences

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## ABSTRACT

*Men are also affected by patriarchy and cultural norms. Increasing numbers, men are being targeted by their female superiors / colleagues at the job site in a way which would easily be qualified as sexual harassment as provided for by the legal definitions of women protection, but unfortunately, due to deeply embedded cultural assumptions about men, such instances never see light. Gender-neutral sexual harassment legislation is needed and should be enacted by the government in order to eliminate any accidental discrimination on the basis of gender and to provide equal protection to both sexes. However, the delay in its implementation may be linked to a lack of effective "Social and collective cry," as stated by the Supreme Court in dismissing the PIL on gender neutral laws. According to a research conducted by The Centers for Disease Control and Prevention in the United States (US), 1 in 17 men reported being forced to penetrate at some point in their lives, and 86.5 percent of these rape victims indicated that the attackers were male.*

*If Indian legislation is adapting and changing in order to make India a prosperous country, why should they lag behind in provisions dealing to male rapes? As a result, the Indian parliament must pass gender-neutral rape legislation, as countries such as the United States, Bhutan, and the United Kingdom have. The Indian judicial system and its citizenry must understand that women can rape males. Men, not just perpetrators, should be recognised as victims by the law. There is a need to highlight the topic of sexual harassment of males to the government and society in order to modify society's stereotyped thinking.*

## I. INTRODUCTION

*People share a common nature, but are trained in gender roles*

- *Lillie Devereux Blake.*

There is a false notion that, rape is a crime committed primarily by men against women, but with the passage of time, it has been discovered that other genders, such as males, homosexuals, and the transgender population, are also equally harmed by this crime.<sup>2</sup> Historically, rape is considered as a crime done by men solely against women only but by the passage of time it has

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<sup>2</sup> Athira Nortajuddin, [Taking male rape seriously](https://theaseanpost.com/article/taking-male-rape-seriously), The Asean Post (Sep. 12, 2020), <https://theaseanpost.com/article/taking-male-rape-seriously>, (last accessed. July. 14, 2020)

been seen that other genders such as males, homosexuals and transgender community are also equally affected by this crime. Actually, rape can happen to anyone regardless of their age, gender, sexual attitude. Though there are large number of such cases but most of them go unreported as people fear that reporting such cases will raise a question on their potency.

There is a widespread belief that men are strong and powerful and can never be any victims of sexual abuse, and that the victims of sexual offences are always women. This belief discourages a male victim from reporting the crime due to fear of repercussions from society and the loss of virginity.

## **II. PATRIARCHAL DEFINITION OF A “MAN”**

Indian society is largely a patriarchal society in which men are expected to behave in a specific preset manner, and any divergence from this pattern results in scorn from society - primarily other men. Some instances of how society expects a "ideal guy" to behave include the belief that a man cannot express his emotions and cannot cry in public, that he must always be tough, and that a man feels no sorrow.<sup>3</sup> The patriarchal mindset of society hinders men from coming forward and speaking out about sexual assaults against them. As a result, there is no authentic evidence demonstrating the reality of men becoming victims of sexual crimes. The urgency of the hour is for men to speak out about similar instances on a scale comparable to the feminist movement, in order to make legislation against sexual offences gender-neutral. Media too has placed a major role in influencing the public opinion about men and how their behavior is supposed to be. Hardly do we have men coming out and speak about the sexual assault they undergo. Sexist humor and comedy are used in Indian films to lessen the seriousness of delicate subjects such as sexism

## **III. REALITY OF SEXUAL OFFENCES ON MEN**

There are three essentials we need to know about sexual assaults. To begin with, although men make up the majority of people who commit rape; yet, a considerable percentage of women perpetrate sexual offences. Second, the fact that women are statistically more likely than males to be sexually assaulted does not mitigate the chances that males confront. Third, there are more men and boys who are victims of sexual assault than we are aware of.<sup>4</sup> Many people

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<sup>3</sup> Sanjana Kiran, [Bridging The Gender Gaps: Rape Laws in India](https://www.whiteblacklegal.co.in/bridging-the-gender-gaps-rape-laws-in-india-by-sanjana-kiran/), Black White Legal (Sep. 16, 2020, ), <https://www.whiteblacklegal.co.in/bridging-the-gender-gaps-rape-laws-in-india-by-sanjana-kiran/> ( last accessed. July. 14, 2020)

<sup>4</sup> Philip N.S. Rumney, In Defence of Gender Neutrality Within Rape, Seattle Journal for Social Justice, (November, 2007) <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1546&context=sjsj> ( last accessed. July. 12, 2020)

assume that male sexual assault isn't a big deal because there aren't many reported cases. While the data for sexual harassment of men in India is almost non-existent as most of such cases go unreported the corresponding data from US Equal Employment Opportunity Commission shows that about 16.5 % complaints of sexual harassment the commission receives annually, are from men.<sup>5</sup> The dearth of recorded instances is due to a lack of legislation that allow such instances to be reported.

#### **IV. ANALYSIS OF INDIAN LAWS ON SEXUAL OFFENCES**

The definition of rape as per section 375 concentrates on women victims of rape. According to Section 375 of the Indian Penal Code<sup>6</sup>, rape is always committed by a man against a woman. If a woman forces a man to have sexual relations with her, it is not regarded a rape; nevertheless, doing the same to a woman is deemed a rape.

The definition of rape given in Section 375 of the Indian Penal Code has two major flaws: it does not take into account non-consensual sexual acts on a man by a woman, and it always considers the woman as the victim, which leads to many false rape cases being filed against men in order to exact revenge or gain an unfair advantage. It is not gender-neutral.<sup>7</sup>

There is no specific statute in India for a male rape victim. Section 377 of the IPC<sup>8</sup> is an exemption to women's rights legislation that identifies unnatural offences and criminalizes carnal relations with any male, woman, or animal. Aside from that, there is the POCSO Act, which criminalizes sexual assaults against male children, but no comparable provision exists for adult males. In US, the definition of rape does not include the word woman or girl. The word "person" is used there making the definition of rape gender neutral, criminalizing all types of penetration without consent illegal, which is different as the definition of rape under Section 375 of Indian Penal Code 1872.

Men aren't the only group that legislators overlook in this manner. It is true that transgender people are also victims of rape and sexual assault. It is necessary to create a comprehensive change to criminal law in order to make basic laws available to all victims, regardless of gender.

The first ever case where the concept of gender neutrality of sexual offences was recognized

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<sup>5</sup> Nikhil Mishra, Gender neutral rape laws in India, latestlaws.com, (Oct 12, 2020), <https://www.latestlaws.com/articles/gender-neutral-rape-laws-in-india-a-necessity/> (last accessed. July. 14, 2020)

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

<sup>7</sup> Arjit Mishra, Gender neutral rape laws: Need of the hour, The Criminal Law Blog, NLU Jodhpur, (May 1, 2020), <https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/> (last accessed. (May. 14, 2020)

<sup>8</sup> Indian Penal Code, Section 377 (1860).

and stated by the supreme Court was in **Sudesh Jhaku v. K.C. Jhaku**<sup>9</sup> it was categorically stated that sexually assaulted men should be given the same protection of the law as given to female victims.

We need to get this simple idea that rape is a crime against the entire society in which we live and looking into **Navtej Singh Johar v. Union of India**<sup>10</sup>, it was clearly stated that the assumption that a woman may only be a rape victim or survivor must be dispelled. With the acceptance of homosexuality as a normal sexual orientation, there is growing worry about changing the gendered rape law to one that is gender-neutral.

Although, the 172<sup>nd</sup> Law commission report made recommendations modifications to broaden the scope of violation and make it gender-neutral. For the first time in India, a very wide and futuristic aspect of sexual offences was looked into. In addition, in parts such as 376, 376A through 376D, adjustments were also recommended. The report also proposed that Section 377 of IPC be deleted, a proposal made in the 172<sup>nd</sup> Law Committee Report 2000. Report 2000. For over 2 decades, experts pondered implementing sex-neutral laws. The legislature nevertheless did not fully adopt the plan. The Criminal laws (Amendment) bill, 2012<sup>11</sup> was based on the suggestion of multiple entities, especially the 172<sup>nd</sup> Law Commission Report, to make sexual assault a gender-neutral offence.

Apart from these sexual offences a major light also has to be put on the domestic abuse that men undergo and is always kept a secret as they are always unreported. The major root cause for this is again the gender-biased laws in India, sadly, there is no provision for men under the domestic violence act and even under the Indian Penal code. In **Sushil Kumar vs Union of India**<sup>12</sup>, “ Merely because Section- 498A is constitutional does not give rights and license to unscrupulous persons to wreck personal vendetta or unleashed harassment by misuse of the provision, the new legal terrorism can be unleashed” The usage of this provision shall always be as a shield against the wrong but not as an assassin’s weapon because when actually the wolf comes up, there is no source to seek help.

According to a research conducted by The Centers for Disease Control and Prevention in the United States (US), 1 in 17 men reported being forced to penetrate at some point in their lives, and 86.5 percent of these rape victims indicated that the attackers were male. Many cases of female child abuse are discovered by chance due to pregnancy, and familial abuse is terminated

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<sup>9</sup> DLT 563, 1996

<sup>10</sup> AIR 2018 SC 4321

<sup>11</sup> The Criminal Laws ( Amendment) Bill, Bill No. 130 of 2012

<sup>12</sup> AIR 2005 SC 3100

by marriage; however, the disclosure rate among boys appears to be lower, and accidental revelation becomes increasingly rare, leading to years of abuse.<sup>13</sup>

The criminal justice system, wholly concentrates on recognizing domestic violence cases only against women. The term “aggrieved person” in the Domestic Violence Act includes and concentrates only on women and the same is observed in Section-498A of IPC.<sup>14</sup> The Constitution of India under Part-III ensures some basic fundamental rights in which we will specifically discuss about Article-14 &15<sup>15</sup> which talk about providing equal rights to all irrespective of their gender and that nobody shall be discriminated on the basis of caste, gender, race etc. The pressing issue today is why aren’t these laws framed for the protection of male victims? And it’s time that we demand equal protection of men under such laws.

## V. CONCLUSION

*“A gender-equal society would be one where the word ‘gender’ does not exist: where everyone can be themselves”*

- Gloria Steinem.

Justice is the right of every individual, whether it is a man or a woman. But unfortunately, sexual offences and cases related to domestic violence have always been viewed with victims being only women ignoring the fact that men can also be victims to abuse. Around seventy-seven countries of the world have established and accepted the gender neutral laws. United States, United Kingdom, Australia and Denmark are out of those seventy-seven countries which have gender neutral laws in their territory. The times have changed, and there is undoubtedly a need to update outdated legislation. It is true that sexual violence can occur to any soul, regardless of his or her age, sexual orientation, or gender identity. By making a gender-neutral legislation, all the citizens become equal in the eyes of law either by expressly mentioning every gender in law or by making the language of law gender-neutral.

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<sup>13</sup> Dhananjay Shrikant Shinde, *Identify and Critically Analyse Gender Biased Rape Laws in India*, Black White Legal (Sep. 20, 2020,) <https://www.whiteblacklegal.co.in/identify-and-critically-analyse-gender-biased-rape-laws-in-india-by-dhananjay-shrikant-shinde/> ( last accessed. July. 14, 2020)

<sup>14</sup> Jagbir Singh Malik & Anuradha Nadda, *A Cross- sectional study of Gender based violence against men in Rural areas*, Indian Journal of Community Medicine, (Jan- March, 2019) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6437789/> ( last accessed. June. 10, 2020)

<sup>15</sup> Constitution of India, Article 14 &15 (1949).