

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 1

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2023

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# The Need for Gender Neutrality in Provisions Relating to Rape

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## ABSTRACT

*The definition of gender and its various types other than the conventional one might be one of the most pondered questions of the 21st century. According to the World Health Organization gender is defined as ‘ the characteristics of women, men, girls and boys that are socially constructed including norms, behaviours, and roles associated with a particular gender. Although understood together, gender is different from sex as the latter is just the physical characteristics of the person while the former is the complex inter-relationship between physical or body features, identity or the internal experience of gender and lastly the social gender or the way by which a person communicates one’s gender to others through the way of clothing, hairstyles and other mannerisms. Assignment of certain characteristics that are socially perceived for a gender gives rise to the ideas of gender roles. Commonly male and female gender roles are created by society and are attributed to certain features. Among many, the characteristic feature of a female is to be vulnerable or weak and to be protected and males are supposed to not be vulnerable on the core can be alleged to be the basis of the law relating to rape when it tends to protect the weak against the wrong.*

**Keywords:** Gender, Gender neutrality, rape.

Gender neutrality is the notion that social institutions, language and policies should not differentiate people based on their sex or gender. The call for gender neutrality in social institutions like law has become louder than ever in the current era. When a law or policy does not distinguish a person as male or female, but rather addresses them in their legal persona irrespective of gender, then such a law can be claimed to be a gender-neutral law.

Many international social institutions and social institutions of western nations strive to comply with gender neutrality while formulating policies. In our nation, many of the laws in existence cannot be referred to as gender-neutral laws as many of them have colonial origins and are old as the 19<sup>th</sup> century. Yet one cannot skip the fact that Indian legislation at the time, failed in amending the laws to accommodate the changing social structure. The Indian Penal Code among many other laws is an example.

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More than anything, the failure to reform these laws caused inequality in the deliverance of justice. The case of provisions related to rape is notorious in this manner which is discussed here.

To begin with, Indian Penal Code clearly define 'Man' as a male human being of any age and 'woman' as a female human being of any age in Section 10 in the general explanation contained in chapter II. Dissolving the concept of gender neutrality at the first instance. Section 375 defining rape clearly begins with – A man is said to commit and comprehends the victim always to be a woman and the other as the perpetrator. Sections 376 A, 376 AB, 376 B, 376 C, 377 DA and 376 DB gives protection to one gender only.

The concept that man can only be a perpetrator is based on the social norm that woman is vulnerable and must be protected. This can be attributed to constitutional validity by finding a base on 'equal protection of law' where equal treatment to people with equal circumstances is given under article 14. The woman can be considered as the gender with equal circumstances, yet it should be noted that all victims can also be considered to be from equal circumstances as every one of them may have been vulnerable at some point to be exploited – irrespective of gender.

One can argue that the rape of a man by a woman is very rare, yet it is deprecative to render such an incident to be impossible. Making the law of rape to be gender-neutral not only gives protection to a wide spectrum of victims but also will state that is rape a crime that needs to be looked down upon and not any particular gender. Also, the protection that is given to male victims of rape perpetrated by a male is now Section 377 of IPC dealing with the unnatural offence, shockingly enough gave the same punishment to the offence irrespective of the consensus given, rendering little consideration to the mental trauma of the male victim who was forced into the act until the landmark Supreme Court decision in *Navtej Singh Johar v. Union of India* in 2018

Another mishap that is continuing to be caused by the gender-specific provision of rape is the ignorance of the plight of the transgender community. The sexual abuse that was forced by the transgender community was recognized very lately by Section 18(d) of chapter VIII of the transgender person (protection of Rights Act) 2019. Yet the act just recognizes sexual abuse as one of the many on the list and gives a mere six-month imprisonment that may be extended to 2 years with a fine while Section 376 of IPC prescribes a punishment of imprisonment of not less than 10 years which may be extended to life imprisonment, which is almost demeaning and restricting (AIR 2018 SC423) the rights of the transgender community.

The United States Department of Justice defines Rape as “Penetration” no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ or another person without the consent of the victim. This definition given to rape very well is a good example of a gender-neutral perspective of the crime which our nation could follow. Although in the part the reports like 172 Law Commission reports in 2000, Justice Verma committee report in 2012 recommended that provisions related to rape be gender-neutral and in fact, The criminal law (Amendment) Ordinance in 2013 made it gender-neutral until it was repealed shortly.

The current state of the laws related to rape can be attributed to the ignorant legislature and the social norm about the role of women and men, yet in the interest of deliverance of justice to everyone, it is essential that these laws with others be made gender-neutral. The provision related to rape from a personal perspective must primarily clarify only two classes of people-victims and the perpetrator, to protect the first and punish the second.

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