
GENDER NEUTRALITY IN THE DEFINITION OF SEXUAL OFFENCES UNDER IPC

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ABSTRACT

The roles of men and women are pre-defined since the beginning of time. A man is perceived as the stronger between the two, which led to women ultimately becoming weaker. The world since then has made progress in all fields except men still being treated as the strong ones. Women today are seen in every field that was thought of as masculine, such as boxing, law, or even the cooperative world. However, the same cannot be said for men. Men even today are looked down upon for being feminine. Men should not show fear or shed a tear as it shows weakness; because of this patriarchal conditioning, they never voice out their concerns. Oxford English Dictionary defines *patriarchy* as a society, system, or country ruled or controlled by men. The Indian Society is a patriarchal society wherein men are expected to be dominant and act in a certain way; if they do not adhere to this, they are ridiculed - primarily by men. Because of this image of men, their rights to consent to an act of physical intimacy are taken for granted. Every law in our country talks about the safeguarding of women, as important as that is, we cannot disregard the sexual crimes against a man. All the laws against sexual offences only talk about men as perpetrators. As per data, the crimes against women are a lot more. However, crimes against men still exist in a significant number. This paper aims to analyse the history of India and understand why even today men are not protected by the law while also disregarding their fundamental rights which are guaranteed to them under Article 21 of the Indian Constitution.

Keywords: Gender, Rape, Sexual Assault, Rape, Transgender

Introduction

Men predominantly have always been the providers and protectors which makes them the stronger ones amongst the two sexes. There exists many more pre existing notions of how a man should be which usually are synonyms for brave and strong. Men constantly being told to be brave and terms like 'men don't cry' are reasons that hold them back and silence their cries. Patriarchy is defined as a world controlled by men, in first glance as beautiful as that seems in actuality it is not that nice, patriarchy has done a lot of harm to the men in a society. One other notion is that a patriarchal society has against men is that they are always willing and wanting to have sexual intercourse which in turn proves that they always are consenting to every act of sex.

Sexuality Education Resource Center MB defines sex as an activity in which one, two or more people use words or touch to arouse themselves and/or each other. In the 21st century with social medias existence sex education has gained an increasing audience. Sex is no more just about pleasure and physical contact but also about Consent. Consent although being the utmost important part about deciding between rape and consenting to sex the other factors such as physiological factors also aren't taken into consideration. It is said that an aroused penis is indication of consent. This explanation is as false as arguing that a lady agreed to a consensual intercourse because she used vaginal lubricant during the time of being raped. Reliance should be put on clinical studies claiming that physiological variables, such as an aroused penis or lubricated vagina, are responses to sexual stimulation and are thus out of a human's control – and hence not evidence of conscience permission for the sexual act.

In India, sexual crimes have been identified as being primarily committed by men. The main argument behind repealing legislation concerning sexual offences is that men are much more commonly than not the perpetrators. In Section 375 of the Criminal Code of 1860¹, the Indian legislation on rape refers to solely a male as the perpetrators and a woman as the victims. All laws regarding sexual crimes take the same stance, with the exception of gang rape, which considers only a woman as the victim but "one or more persons" as the perpetrator, and Section 354 of the Penal Code², that also indicates that whoever assaults or uses criminal force on any woman, intentionally trying to outrage or knowing it to be likely that he will thereby outrage

¹ The Criminal Law Amendment Act , Section 354 (2013)

² The Criminal Law Amendment Act , Section 326 (2013)

her modesty, punishable with imprisonment of either description for a term which may extend to two years. However, in both of these incidents, only a woman is named as the victim.

History of Sexual offences in India

It is important to understand the mindset of the people of India before understanding why the law makers have restricted these laws. India today is a lot different and similar at the same time. It is full of development and change but also holds on to its tradition and patriarchal thinking. This patriarchal society has the thinking that women need protection from men, the only genders taken into consideration at that time were men and woman. Although the transgenders were recognised there was no protection provided to them.

The Mathura rape case³ of 1972 acted as an eye opener to a majority of the country as consent for the first time was challenged due to the awareness of few knowledgeable academicians. In this case, the Supreme Court ruled that Mathura, the tribal woman from Maharashtra who'd been raped by three police officers, had surrendered and consented to the sexual encounter because there were no signs of struggle on her body. It was decided that the lack of injuries imply consent. Following this controversial case, four legal professors issued an open letter to India's Chief Justice denouncing the case. This case triggered a demand that the burden of proof regarding permission be shifted to the accused once the prosecution had met its duty of demonstrating sexual intercourse.

Arguments put forth in opposition to gender neutral laws

1. Patriarchal Society.
2. It is physically impossible for women to rape men.
3. Real men can defend themselves⁴
4. Does not reflect social reality
5. Men and women experience sexual assault differently.

³ Tuka Ram And Anr vs State Of Maharashtra, 1979 AIR 185.

Retrieved from <http://www.indiankanoon.org/doc/1092711/>

⁴ Perera, A. (2013). Why a gender neutral anti- -women, *The Firstpost*.

Retrieved from http://www.firstpost.com/living/why-a-gender-neutral-anti-rape-law-isnt-anti-women-657065.html?utm_source=ref_article on January 9, 2014.

All of these points are dealt with in the paper below explaining as to why these reasons are merely excuses and can be dealt with in order to make sure justice is delivered and every citizen's fundamental rights guaranteed under Article 21 are safeguarded.

Rape Laws in India

Rape and Sexual Offences are very biased in the Indian Penal Code as they protect only one gender, protection of an individual from sexual offences indicates that all genders can be victims as well as perpetrators. Sections 375 and 376 of the Indian Penal Code prescribe that only a male may be found guilty of rape and the victim could only be a woman. Furthermore, the rules governing stalking, voyeurism, and sexual harassment are specific to women, which means that the perpetrator can only be a male, while the sufferer can only be a woman. However, because the term used is anyone, the legislation pertaining to hurling acid is gender neutral.

The idea in Indian law is that a victim of rape may only be a woman. This stems from the belief that rape is just an act of sex to satisfy the perpetrator's sexual urge. However, there is indeed a growing recognition that sexual violence is not simply an act of deep desire, but also a means of demonstrating control or supremacy of one caste, class, religion, or group over another, as well as acts of authority and disgrace. If this is true, there is no reason why the male gender should be precluded from becoming a victim of rape in India. This set of circumstances of male dominance and attacks on women that once did exist has now shifted over the decades, and we are at a point in time in which such laws and regulations are no longer supporting the intent, but instead disregarding and actually hurting the other genders against whom false accusations and false instances are being constituted simply because of laws which are in place today acknowledge women as victims of rape and sexual offences while ignoring not only the prospect of them being the perpetrators.

According to a recent research, A Delhi-based Centre for Civil Society found that approximately 18% of Indian adult men surveyed reported being coerced or forced to have sex. Despite the fact that rape and sexual assault has not been studied as extensively as female rape, there are various figures indicating that males are raped and that the frequency of male rape is higher than is often assumed. There are no statistics, studies, or recorded examples of males being sexually abused because they are afraid of being mocked by those around them. If a male

is sexually assaulted by a female, he is deemed timid, and if he is sexually assaulted by another male, his manhood is mocked, maintaining the idea that males are not sexually abused.

In its 172nd report, the Law Commission of India proposed that rape laws be gender neutral. It is suggested that the concepts of equal treatment under the law and equal protection of rights contained in our Constitution as fundamental rights must also be applied to this scenario. At first glance, only a gender inclusive rape legislation would lead to equal treatment under the law for all genders. However, we should not lose sight of the reality of our society. It cannot be argued that even the most endangered portion of the population is women.

This stems from the idea that rape is just an action of intercourse to fulfill the perpetrator's sexual urge. However, there is indeed a growing recognition that sexual violence is not simply an act of love and desire, but also a means of demonstrating dominance or superiority of one caste, class, religion, or group over another, as well as acts of power and humiliation. If this is true, there is no reason why the male gender should be precluded from becoming a victim of rape in India.

The Transgender Community

'Transgender' is a term used for the people who do not comply to standard concepts of gender identity, appearance, and expression are referred to as nonconformists. It comprises hijras, kothis, and transgender people. While some seek surgical procedures to turn into the opposing sex, others play the opposite sex.

There is plenty of historical and mythical evidence suggesting that India has always been a safe haven for the transgender people. In truth, the Hijra people in India may trace their roots back to stories from the Ramayana and the Mahabharata. So, why are they hardly recognised by Law in India and denied opportunities as full citizens of this nation?

Males weren't the only group that politicians disregard in this manner. Transgender people are subjected to rape and sexual assault offences. To render basic rules accessible to victims of both genders, a comprehensive revision to criminal law is necessary. In *State of Punjab v. Ramdev Singh*⁵, the Supreme Court stated that rape is not just a crime against a woman's person, but also a criminal against society as a whole. It is a violation of basic rights and a violation of the most valued fundamental right provided by Article 21 of the Indian

⁵ *State of Punjab v. Ramdev Singh* (2004) 1 SCC 421, 424

Constitution. A clear example of the difference and injustice to the other genders not only men can be clearly noticed by the following example. Under Chapter 8 Section 18(d)⁶ of the Transgender Persons (Protection of Rights) Behave, 2019, whomever tries to act in a way that causes sex assault to a transgender person faces imprisonment for a term not less than six months but up to two years, as well as a fine. This plainly demonstrates the state's disregard for transgender people. The stench of prejudice may be detected since sexual assault has been classified as a petty misdemeanour punishable by a maximum of two years in prison and a fine, but a comparable offence against a cisgendered woman is punishable Under Section 376 of the Indian Penal Code⁷ with rigorous imprisonment of either description for a term which shall not be less than ten years⁸, but which may extend to imprisonment for life, and shall also be liable to fine.

The Queer Community

Forcible man-on-man sexual activity is prohibited in India under Section 377 of the IPC, which defines carnal intercourse as being against the natural order. It is quite disturbing because in India, male on rape and sexual assault is combined with homosexuals' consensual sexual activity. A difference must be made between forced and voluntary sexual intercourse.

Following the Criminal Amendment Act of 2013, the minimum sentence for rape is seven years in jail, with a maximum of life imprisonment. Section 377, on the contrary, which punishes forcible sexual relations among men, has no minimum punishment. When a minimum penalty is specified, it is presumed that the offence is severe, and so rape is punished with a minimum term of ten years. Male on male rape is far from even being recognised in India.

The three-member Verma Committee⁹ suggested that the victim be gender inclusive, so that sexual assault on males, as well as gays, transgendered, and transsexual people, would be covered under rape legislation. Ratna Kapur (2013) calls for the repeal of Section 377 in order to have an effective gender neutral law. Criminalizing non-consensual sex, regardless of

⁶ Section 18, Transgender Persons (Protection of Rights) Act, 2019.

⁷ Indian Penal Code, Section 376, (1860).

⁸ Gupta, T. S. Child Abuse.

Retrieved from <http://www.sos-sexisme.org/english/IndiaChildAbuse.htm> on January 1, 2014.

⁹ Report of the Committee on Amendments to Criminal Law (2013), retrieved from <http://nlrd.org/womens-rights-initiative/justice-verma-committee-report-download-full-report-on-january-2-2014>.

gender, can only succeed if sexual minorities are first guaranteed the opportunity to have consensual sex.¹⁰

Conclusion

This paper aims to create awareness about the neglect of other genders in the legislations that are made to protect the citizens of this country and how these legislations due to various reasons discussed in above have been selective about who to protect and who can protect themselves. After the understanding of the various judgments delivered by the courts of this country it can be understood that these legislations are in extreme need of change and update as it cannot be safe for only women to be protected from sexual offences. It violates the fundamental right promised by our constitution to every citizen.

Patriarchal society may appear to be beneficial to males on the surface, but it has significant disadvantages for men as well. Importantly, homosexual acts as a war crime has been known and acknowledged since ancient times; yet, Indian politicians chose to turn a blind eye to this issue, refusing to realise that any individual, regardless of gender, can be a victim or perpetrator of sexual abuse. There is a legitimate need to teach the judiciary system as well as the general public on how sexual stimulus can be achieved without knowing consent for sexual engagement.

We also discovered that, contrary to common belief, males do not experience rape differently than women. Male-dominated society dictates that males have the ability or intuition to retaliate during rape, although research shows otherwise. Concerning opposition from radical feminist activists, we discovered that various feminist schools, including notable activists such as Brownmiller, have recognised and accepted the occurrence of male violence. As our paper makes apparent, there is an urgent need to shift away from the current phallus-centric regulations that confine the discussion of assault legislation.

The way to recognising sexual assault or all genders is to first reframe all present laws in a sexually neutral language to confirm the concept that sex will never again be the foundation for judging legal wrongs. Furthermore, because the law is nothing more than society's collective desire, gender sensitization of the whole legal system and the updating of lawful

¹⁰ Kapur, R. (2013). The new sexual security regime. *The Hindu*. Retrieved from <http://www.thehindu.com/opinion/op-ed/the-new-sexual-security-regime/article4379317.ece> on January 3, 2014.

instruments for investigating agencies is a must. To establish an inclusive society, it is necessary to instil variety and comprehensiveness in both thinking and action.