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Rape as a Gendered Crime

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Rape, an enduring crime throughout human history, is addressed under Section 375 of the Indian Penal Code (IPC)¹, which reflects antiquated gender biases. Despite numerous amendments, this provision perpetuates the belief that only men are perpetrators and only women are victims of rape. This paper explores the necessity of adopting gender-neutral rape laws in India, examining its historical context, legal framework, and societal implications. Through a comprehensive literature review, including critical case analyses and comparative studies with the UK's Sexual Offences Act, the paper highlights the need for legal reform to ensure equal protection under the law for all genders. Despite concerns that gender-neutral legislation might undermine efforts to address sexual violence against women, empirical evidence supporting these claims is lacking. By acknowledging the possibility of female perpetrators and male victims, gender-neutral laws can promote reporting, protect all victims, and challenge societal misconceptions. The paper concludes that gender-neutral rape laws are essential steps toward creating a more just and equitable society for all individuals, irrespective of gender, while also acknowledging the unique challenges faced by different genders in the context of sexual violence. It advocates for the revision of Section 375 of the IPC to embrace gender-neutral language and emphasizes the importance of recognizing all victims and perpetrators of rape within the criminal justice system. Ultimately, gender-neutral rape laws in India are crucial for upholding constitutional principles of equality and ensuring that justice is served for all victims of sexual violence.

¹ Indian Penal Code 1860, s 375

Keywords: *rape, gender-neutral legislation, societal implications, gender stereotypes, gender discrimination.*

OBJECTIVES OF THE PAPER

The paper tries to achieve what are the problems of gender-biased rape laws in India. Why it is necessary to have gender-neutral rape laws in India. Through the case laws, the paper explored the evolution of Rape Laws in India and analysis of it. The paper then covers the comparison between India and the UK, where it explains how the laws are different from each other. Later it discusses the negative impact of having gender-neutral rape laws in the county. The paper concludes with an opinion on the gender-neutral rape law.

LITERATURE REVIEW

India's rape laws have long faced criticism for their gender prejudice, which is seen as a reflection of patriarchal historical beliefs. Rape is defined under Section 375² in a way that only views males as the offenders and women as the victims. To provide equal protection under the law, however, gender-neutral legislation must be adopted in response to changing societal norms and legal interpretations. The article investigates the necessity of gender-neutral rape legislation in India and considers the effects that these laws may have on various cultures and genders. It emphasizes how crucial it is that laws be in line with the equality ideals outlined in Articles 14 and 15 of the Indian Constitution. To guarantee that legal entitlements are unaffected by gender, the gender neutrality theory is examined.

Crucial case laws like *Sakshi v Union of India* and *Sudesh Jhaku v K.C. Jhaku* highlighted the judiciary's acknowledgement of the need for equal protection under the law for male victims of sexual assault. Initiatives to update India's rape laws may be seen in the Law Commission of India's recommendations and later legislative changes like the Criminal Law Amendment Bill 2012.

² *Ibid*

RESEARCH QUESTIONS

- 1). Whether the gender-neutral rape law has any implication on males and other communities.
- 2). How does gender-neutralization of Rape Law in India would affect the Female Rape Victims?

INTRODUCTION

Rape is such a crime that has existed in the evolution of human society. The Offence has been defined under section 375³ and the punishment has been given under section 376^{4,5}. There have been many amendments made since 1860 but still, it follows an archaic thought where always men are the perpetrators and women are the victims.⁶

There is an eye-catching line in section 375⁷, the section starts with A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under the circumstances falling under any of the six following descriptions: against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health and in any case if she is under 18 years of age.⁸ The interpretation of the law states that only a man can be a perpetrator and only a woman can be the victim of the crime.⁹

The anticipated reasons behind section 375, before Independence India was believed to be male-dominated in a patriarchal society where women played supporting characters. Women faced inequality in many areas such as social, political, and educational. The Laws were made according to the archaic situation keeping male dominance in mind, so the rape law was framed as gendered-specific. This mindset was changed after witnessing the participation of women in

³ *Ibid*

⁴ Indian Penal Code 1860, s 376

⁵ Kanchan Jodha, 'Gender Biased Rape Laws in India' (2021) 4(3) International Journal of Law Management and Humanities <<https://doi.org/10.1000/IJLMH.11660>> accessed 22 March 2024

⁶ Shruti Gupta, 'A Critical Analysis on Gender Biased Rape Laws in India' (2020) 2(2) Indian Legal Solution International Journal of Law and Management <<https://ilsijlm.indianlegalsolution.com/a-critical-analysis-on-gender-biased-rape-laws-in-india/>> accessed 22 March 2024

⁷ Indian Penal Code 1860, s 375

⁸ Gupta (n 6)

⁹ *Ibid*

the freedom struggle. After Independence, the framer of the constitution of India gave equal rights to women.¹⁰

The UK's Sexual Offences Act has a gender-neutral stance, which is highlighted in this review's comparative study of rape legislation between India and the UK. The shortcomings of Section 375, which reinforces prejudices and obstructs the administration of justice for male victims, are highlighted by this contrast.

Though there are concerns that gender-neutral legislation might jeopardize attempts to stop the sexual assault of women, there is little genuine information to back up these claims. The analysis dispels myths and highlights how crucial it is to include a range of gender viewpoints in conversations on sexual assault.

WHY IS IT NECESSARY TO HAVE GENDER-NEUTRAL RAPE LAW IN INDIA?

The term 'Rape' still upholds the falsehood that only men commit this crime and that only women are victims. It is now, after all these years, politically correct to argue that males, transgender persons, and other non-confirmative fluid gender identities can all be considered victims of rape in India. The fact that justice should be served to everyone equally, regardless of gender or other forms of prejudice, is something that legislators must investigate.¹¹ It is important to note, though, that the question was meant to challenge misconceptions regarding sexual offences, including the idea that they are exclusive to women. Articles 14 and 15 of the Indian Constitution are violated by Gender discrimination. The transgender community which includes hijras, Kothis, and others is usually disregarded while laws are being passed. Due to prejudice, this harmful stereotype deprives a tiny segment of society of justice, liberty, and the right to life.¹²

The gender neutrality hypothesis states that laws should not be developed regarding a person's gender while they are being created or implemented. It seeks to guarantee that no person's

¹⁰ *Ibid*

¹¹ Monesh R. B., 'Rape Laws in India: A Gender Perspective' (2022) SSRN <<https://dx.doi.org/10.2139/ssrn.4309580>> accessed 22 March 2024

¹² *Ibid*

gender influences any of their entitlements, including equal legal protection.¹³ The goal of Indian rape legislation is to break the link between the crime and the male-female dichotomy. The definition of rape under Section 375¹⁴ has undergone many modifications, yet it nevertheless upholds the commonly held belief that rapes invariably include male attackers and female victims.

THE CASE LAWS THAT INFLUENCED THE DEVELOPMENT OF RAPE LAWS

The court in the case of *Sudesh Jhaku v K.C. Jhaku*¹⁵ deliberated on the necessity of having a gender-neutral perspective in legislation concerning sexual assault. The research findings indicate that there is a need for equal legal protection to be extended to male victims of sexual assault, like the existing provisions for female victims. Subsequently, in the case of *Sakshi v Union of India*,¹⁶ the Supreme Court of India decided to advance the issue to the Law Commission of India. The present sexual abuse laws were shown to be biased in the 172nd report of the Law Commission of India that was released. To produce a law that is more by contemporary values, the recommendations presented in this study were integrated into the Criminal Law Amendment Bill 2012. The case of *Priya Patel v State of MP*¹⁷ witnessed an important turn whereby women have been involved in a gang rape incident. However, the court dismissed the notion that it cannot be assumed that women possess the intention to perpetrate rape.¹⁸ Consequently, despite the frequency of several recorded occurrences, the persistence of a traditional mindset frequently resulted in a lack of serious consideration for these incidents.

¹³ *Ibid*

¹⁴ Indian Penal Code 1860, s 375

¹⁵ Ridhi, 'Know What Led the Supreme Court to Set aside Private Tutor's Conviction in 1996 Rape Case' *SCC Times* (5 February 2024) <<https://www.sconline.com/blog/post/2024/02/05/know-what-led-supreme-court-set-aside-conviction-1996-rape-case/>> accessed 22 March 2024

¹⁶ *Smruti Tukaram Badade v State of Maharashtra & Anr* (2019) 2 SCC 210

¹⁷ *Shatrughan Chauhan & Anr v Union of India & Ors* (2014) 3 SCC 1

¹⁸ *Ibid*

NEGATIVE CONSEQUENCES FOR FEMALE VICTIMS OF RAPE BY NEUTRALIZATION OF GENDER-BIASED RAPE LAW

The problem with recognizing male victims is that the gender-neutrality of rape may be interpreted as a kind of gender disguising, which would be an affirmation of feminism.¹⁹ Men and women should be treated equally, according to the gender-neutral perspective, which also believes that gender-neutral rape statutes may have undermined efforts to change rape laws and that men and women experience sexual assault in different ways.²⁰ There is no supporting evidence in the legal and social science literature for the theoretical arguments against gender-neutral rape legislation.²¹ There is apprehension that the existence of male sexual victimization and the criminal justice system's proper classification of it will be superseded by theoretical arguments against gender neutrality in the case of rape.

A comprehensive agenda for law reform has included gender-neutral amendments to reflect a more contemporary view of the goal of rape legislation, which is to safeguard sexual autonomy from the harm caused by non-consensual penetrative sex acts. The scholars claimed by referring to *Sakshi v Union of India* Judgement, that conventional rape laws, which solely forbid penile-vaginal sex, prohibit an immense quantity of behaviour that is extremely comparable to the conduct legally labelled as rape and such restriction appears to base on no logical or defensible reasons. The similarities between the physical or psychological damage brought on by the penis or other items entering the mouth, anus, or vagina without consent are highlighted in this critique.²² The conventional arguments for a more limited definition of actus reus in rape seem to have become less compelling, which has reinforced such criticism.

¹⁹ Edward Richings, 'The UK Offence of Rape Should Be Entirely Gender Neutral' (*Academia*, 14 June 2017) <https://www.academia.edu/33458995/The_UK_offence_of_rape_should_be_entirely_gender_neutra> accessed 22 March 2024

²⁰ *Ibid*

²¹ Philip N.S. Rumney, 'In Defence of Gender Neutrality within Rape' (2007) 6(1) *Seattle Journal for Social Justice* <<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1546&context=sjsj>> accessed 22 March 2024

²² Richings (n 19)

COMPARATIVE ANALYSIS BETWEEN INDIAN RAPE LAW AND UK'S RAPE LAW

The comparison between the UK's sexual offence laws and India's Section 375 of the IPC reveals a significant contrast in their gender-neutral approach. The definition of rape under UK law is more gender-neutral than in other countries since it includes both men and women. UK rape clause states if 'he' intentionally penetrates the vagina, anus, or mouth of 'B' here B means both man and woman. In contrast, Section 375 of India's penal code defines rape as the act of a 'man' against a 'woman' providing a biased approach that fails to provide justice for male victims and encourages the misconception that men are invulnerable to sexual assault.

The UK's Sexual Offences Act provides a definition of rape that is gender-neutral, meaning that it applies equally to both male and female victims. The law treats all perpetrators equally, regardless of their gender. This method recognizes that both men and women can be victims of sexual assaults, and it guarantees that the law will protect and provide justice for everyone. However, Section 375 reflects a gendered framework by defining rape only in the context of a man's act of violence against a woman. This narrow definition maintains the negative stereotype that males cannot be victims of sexual assault and does little to recognize or protect male victims. This discrimination in the law not only disregards male victims but also restricts the reporting and acknowledgement of situations in which men are sexually assaulted.²³ This bias in the law creates an environment in which crimes committed against men frequently go unreported or unnoticed owing to societal misconceptions and legal constraints.

India must enact rules regarding rape that are unbiased and do not discriminate based on gender to correct the present imbalance and provide equal access to justice for all victims, irrespective of their gender. It is very necessary to revise Section 375²⁴ to adopt gender-neutral wording that acknowledges the possibility of victimization for people of both sexes. The act of rape itself, rather than the gender of the people involved, should be the primary emphasis of any such revisions to the law. India can promote reporting, protect all victims, and challenge

²³ Rumney (n 21)

²⁴ Indian Penal Code 1860, s 375

stereotypes that now obstruct justice for male victims of sexual assault if it adopts a more inclusive legal framework.

However, the act of a woman committing rape against a male has not traditionally been addressed by any explicit legal provisions in either the United Kingdom or India.²⁵ The traditional idea of rape as a crime committed largely by men against women is responsible for this omission. The current legal definition of rape, which emphasizes penile penetration, does not cover situations in which a woman could coerce another person into sexual activity without their consent.²⁶

There are no provisions in British law that dealt explicitly with rape committed by women against men. A definition of rape that only focused on penile penetration led to this difference by eliminating all cases in which a woman committed the crime. The false belief that only males could commit rape because of the need for penile penetration was the reasoning behind this restriction.

Consequently, if a woman was to engage in an act that satisfied the conditions for rape by compulsion or force against a male, the charges and legal proceedings initiated against her would be categorized under separate sections or statutes, apart from those explicitly about rape.²⁷ The reason for this is that within the legal framework, women were not classified as potential perpetrators of rape due to the restrictive definition that exclusively encompassed crimes involving penile penetration.

CONCLUSION

Gender neutrality in addressing rape is not intended to eliminate the consideration of gender but to ensure equal protection under the law. Some critical arguments say that gender-neutral approaches may 'negatively impact women', but there isn't actual evidence to support this argument. The discussions about rape should incorporate all gender-related issues and it must include different experiences of sexual violence of both men and women. This perspective

²⁵ *Smruti Tukaram Badade v State of Maharashtra & Anr* (2019) 2 SCC 210

²⁶ *Rumney* (n 21)

²⁷ *Ibid*

misrepresents reality on multiple fronts. Those supporting gender-specific rape laws often lack substantial evidence or convincing arguments. Graham does not try to thoroughly assess the rationale for gender neutrality, which raises questions about the hasty dismissal of such a case. In fact, many arguments against gender neutrality can be exposed even without considering male rape.

Furthermore, it's important to note that gender-neutral laws acknowledge that women can also be perpetrators of physical rape and man can be victims too. The longstanding lack of recognition of these sexual offences in legal contexts is, to some extent, a consequence of their historical dismissal in research and court decisions. As our comprehension of sexual misconduct by women continues to grow, it's essential for legal discussions and analysis to integrate these fresh perspectives. To be a society that treats sexual assault with the gravity it deserves, we must acknowledge all victims and perpetrators of rape. Equally vital in this endeavor is the accurate classification of sexual violence by criminal law. It is entirely feasible and advisable to achieve this without negating the fact that most rape victims are female and that there are crucial gender-related factors to consider when it comes to understanding the roots of rape, supporting victims, and upholding the law.²⁸

²⁸ *Ibid*