

# LEGALFOXES LAW TIMES

## GENDER NEUTRALITY LAWS IN INDIA

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### ABSTRACT

The Constitution of India, 1950 safeguards every person's equality before the law and guarantees every person the right to live with human dignity and a right not to be discriminated against based on religion, sex, race, caste or place of birth. One of the controversial issues faced in India from ancient times to this present-day world is the existence of gender-neutral rights. And, it is past the time to acknowledge crimes like sexual assaults and rape against transgender and men. Thus, the main objective of the Gender Neutrality Bill is to make criminal offences in India gender-neutral. Further, the bill respects and identify with male and transgender sexual assault and rape victims, since the current legislation only acknowledges women as rape and sexual assault victims. This article scrutinizes the need for gender-neutral laws in India and further provide recommendations to bring reformations in the laws.

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### INTRODUCTION

Gender unequal laws are one of the most prominent manifestations of inequality in India. Gender equality affects each member of the community at large and shapes the very foundation of a just community, and so the problem of social inequality is of immense significance and gigantic repercussions enveloping an all-encompassing and infinite canvas.<sup>2</sup>

Gender disparity in India affects wellness, employment, social and political differences between genders in India. Further, these disparities and their social roots affect India immensely through sex ratio, educational performance and social and economic environment.

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<sup>2</sup> Claire Melamed, *Gender is just one of many inequalities that generate poverty and exclusion* | Claire Melamed, The Guardian, Mar. 9, 2012, <https://www.theguardian.com/global-development/poverty-matters/2012/mar/09/gender-inequality-poverty-exclusion> (last visited on January 09, 2022)

The term Gender-neutral signifies the view wherein the policies, language and any other social or political institution should avoid discrimination or distinguishment on the roles of different genders to avoid the different roles specified by the society at large about a specific gender.

India has witnessed various “Women’s Rights Movement”, similarly “Men’s Rights Movements” and “Lesbian, gay, bisexual, transgender and queer (LGBTQ) Rights Movement” had put forward the undue harassment, mental torture and legal and social difficulties faced by them.

### **GENDER-NEUTRALITY BILL**

The Gender Neutrality Bill was introduced in the year 2012 but the same was suspended in 2013 when it was reported by the Ministry of Home Affairs that “only a man can be a perpetrator and not a victim” which brings us to the question of whether Indian Constitution made quality accessible as per the gender and their roles defined by the society.

The Criminal (Amendment) Bill, 2019 has introduced alterations in the Indian Penal code, Code of Criminal Procedure and the Indian Evidence Act to substitute the word “men” or “women” to “other person” or “any person”. Further alteration is proposed to substitute the words “penis” or “vagina” with the word “genitals” which would help in shattering the untrue image of always the man being a perpetrator and the woman as always being the victim, i.e. “All men are bad” which leads to discrimination and harassment of men and transgenders in Indian society.

This bill will further recognize the rights of persons protecting themselves from false accusation cases of rape, preventing child abuse, custodial rape and sexual abuse of any gender, which will help men and transgenders to come forward and safeguard themselves from rape and sexual assault wherein a legal platform will be available for them too.

The main reason for introducing this bill is to recognize and empathize the rights of men and transgender to guarantee legal recourse from sexual assault and rape and to break down the stereotype that men cannot be raped or be sexually assaulted too. Generally, it is assumed by the society at large that men or transgenders cannot be raped or sexually assaulted and be a victim of any such incident but with this bill not only they will be safeguarded their rights but if any such

incident takes place then there will be provisions for them to take recourse to rather than before wherein they are just helpless and shamed by the society to put forward such unfortunate incidents and suffer. No one thought that the reason behind men or transgenders not filing complaints of such unfortunate incidents is not because they cannot be a victim but a lack of legal recourse or lack of provision under the legal system in India.

In a survey conducted by the Ministry of Women and Child Welfare in the year 2007, it was brought into notice that 53.22% of children have faced one or more forms of sexual abuse and out of that 52.94% was comprised of boys who faced sexual abuse in form or another.

### **GENDER-NEUTRAL LAWS- WEAPON OR SHIELD?**

Nowadays, everyone talks about gender-neutrality but the reality is sadly far from realism. It is right that there was a need for the government to lay down special provisions in the Constitution to safeguard and ensure equality but nowadays these provisions are undoubtedly unfair to men and transgenders. It is the right time for gender-neutral laws since it's not always the men who are at fault or perpetrators and women are always perceived as victims, which is not entirely true and in present time, at times it can be vice-versa too.

It is not fair that laws consider sexual or economic abuse of women and does not recognize and empathize with the sexual or economic abuse of men and transgenders which reflects the inequality in the legal system in India. Certainly, India is regularly considered as a country that follows a grungy treatment towards women but no one has given a single thought about the abuse faced by men or transgenders by women. India now needs a law that not only protects women's privileges but also protects the privileges of men and transgenders, so that the victim is rightly protected and no gender is harassed by way of false charges or worse, not even considered a victim. Gender-Neutral laws will protect the victims, to ensure that the laws are not used as weapons instead of shields, which is the primary motive of the legislation.

### WHY IS THERE A NEED FOR GENDER-NEUTRAL LAWS IN INDIA?

Indian criminal laws have been amended numerous times over years to adhere to the needs of time and change in scenario. Like the laws of sexual offences were amended following the Nirbhaya case for women protection. The main crux of the Criminal Law (Amendment) Bill, 2019 is to provide for legislation that is gender-neutral and safeguards every person who has suffered any form of sexual abuse and punish the perpetrator irrespective of their gender.

Furthermore, it is critical to recognize and empathize with the grey area under the existing criminal laws in India wherein the rape and sexual assault of men and transgenders are not considered as an offence. Other genders beyond the age of 18 have no legal recourse to protect themselves because they do not fall under the purview of the POCSO after the age of 18 years. Also, there is no denying that women are sexually assaulted and all of the legislation enacted helps women well within the bounds of equality but it is necessary to alter make the laws gender-neutral for the progressive evolution of law to safeguard men and transgenders from any form of sexual abuse and provide them with the legal recourse and have legislation relating to any form of sexual abuse to reflect evolving social morals. This change will help more victims to seek help and justice.



*"All human beings are potential rape victims. Spouses are raped. Male and female children are raped. Babies are raped. Physically handicapped persons are raped. Anaesthetized patients are raped. Mothers, fathers, brothers and sisters are raped. Adolescents rape one another as well as older persons and children. Male and female prisoners rape each other. During wars, soldiers have been known to rape entire communities. Males rape females and males. Many rapists are gender and age blind. Females rape other females and males. No person is immune from the human potential to rape or be raped."*<sup>3</sup>

The need for gender-neutral laws is of high requirement in the rape and sexual assault legislation as from the beginning women are only considered as the victims of the crime due to the prevalent patriarchy in Indian society. The rise of women empowerment and feministic approach

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<sup>3</sup> Noreen Abdullah Khan, Male Rape: The Emergence of a Social and Legal Issue 1 (Palgrave Macmillan, New York, 2008)

did touch the upliftment of women but it did not take into account the need for gender-neutral laws in India which bypassed the abuse and harassment faced by the other genders in India.

Women in India are safeguarded by the different statutes in India but despite having equal fundamental rights given to men and females, the rights of men are not recognized compared to those of women.

The scenario has changed today and many PIL(s) have been filed in various High Courts and the Apex Court for making rape and sexual assault laws gender-neutral. In 2017, the question of the legality of existing rape laws in which only men are considered to be the perpetrator was raised in Delhi High Court.<sup>4</sup> Similarly, another PIL was dismissed by the Apex Court where a plea was mentioned to make rape laws gender-neutral as there are no laws to safeguard men from sexual harassment in India.

The Fundamental Rights guaranteed to men and women are also available to the third gender. India recognizes the third gender as Transgender legally. Also, Section 377 of the Indian Penal Code, 1860 was decriminalized after the landmark judgement of the Hon'ble Supreme Court in the case of Navtej Singh Johar versus Union of India<sup>5</sup>.

The Law Commission further recommended making rape and sexual assault laws gender-neutral. Also, the Union Government agreed to make gender-neutral legislation by substituting "women" instead of the word "person" after the Nirbhaya incident to cover all forms of sexual violence but due to the criticism from the feminist groups due to the prevalent patriarchy present in the Indian society the Criminal Law (Amendment) Act, 2013 restored to the gender-specific definition of the rape and sexual assault laws.<sup>6</sup>

The Rights of Transgender Person's Bill, 2014, the Rights of Transgender Person's Bill, 2015 and the Transgender Person's (Protection of Rights) Bill, 2016 are certain bills that gave rights to Transgender persons and the main crux of these bills were drawn from the infamous judgement

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<sup>4</sup> Delhi HC issues notice to Centre in PIL seeking gender-neutral IPC rape, <https://www.barandbench.com/news/delhi-high-court-rape-section-375-gender-neutral> (last visited on January 9, 2022)

<sup>5</sup> (2018) 1 SCC 791; (2018) 1 SCC (Cri) 499; 2018 SCC OnLine SC 10

<sup>6</sup> Structural Violence on Women: An Impediment to Women Empowerment, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5561688/> (last visited on January 8, 2022)

of NALSA versus Union of India<sup>7</sup> wherein the legal identity of Transgender persons was given to them. Further the Transgender Person's (Protection of Rights) Bill, 2017 was introduced to tackle the social stigma and issues faced by the third gender in Indian and society and ways to empower them.

Even though the Constitution of India safeguards the rights of citizens of the country and guarantees equality but there are some legislations like rape and sexual assault laws that are gender-biased and grant protection to one segment of the genders in India due to the background of the prevalent patriarchal society in India. The scenario today has changed and there is a requirement of gender-neutral laws in India and it is on the part of the lawmakers to alter these laws and bring about a change with safeguards and guarantees equal rights to all genders in India and similar stringent laws for violation, abuse or harassment of any gender.

## **CONCLUSION**

Indeed, most laws in India are meant for both male and female genders but now it's time to include and recognize the rights of transgender in these laws. Also, surprisingly, the existing rape and sexual assault laws are female-centric. It is the right time to reassess the legal definition of sexual assault as well as rape and it must be categorized in compliance with all the possible degrees of harm that can be caused by any gender to another gender.

It is need of the hour in India to establish gender-neutral laws which imply that any gender can have easy access to justice, to bring an end to the discrimination in respect of sexual crimes of any specific gender. And, only when this level of treatment of equality is met in India it can be truly said it has satisfied the very basic nature of the Constitution against the challenge to the basic structure, i.e. discrimination.

Rape and Sexual Assault law in India needs to be amended and include all illegal penetration in genitals with any object or any part of the perpetrator's body or genitals. The existing law has failed to recognize that rape and sexual assault can happen with anyone and further anyone can be a victim be it a man, woman or transgender and thus anyone can be a perpetrator be it a man,

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<sup>7</sup> (2014) 5 SCC 438; 2014 SCC OnLine SC 328

woman or transgender. Thus, there is an alarming need for gender-neutral laws in India safeguarding the protection of all person's rights as suggested by the Criminal Law (Amendment) Bill, 2019.

Lastly, there is no doubt that the law is the need of the hour but we as a society at large should adapt and change as per the need of the hour and it is high time to recognize and empathize with other persons right to protection against rape and sexual assault, irrespective of the victim's gender. Society should promote a healthy environment for victims rather than blaming the victims and making them suffer the unbearable pain of the abuse and rape along with social stigma and shame against protecting someone's right against such unfortunate incidents and seek legal protection and recourse.

