

## **GENDER NEUTRALITY: A WAY TO PAY HOMAGE TO LONG LOST HUMANITY?**

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### **INTRODUCTION**

When we come across the term ‘Gender Neutrality’, we often confuse ourselves with its many faced definitions that come flying around like messenger birds from either human right activist or pseudo intellectuals. They may vary from societal unacceptance of the non-binary genders to the sexist laws that are up surging the gender bias in the name of justice. However, the scope of this essay would limit to the sexist laws that are eviscerating the rights out of the humans. In simpler terms gender neutrality is a concept to a bridge the differences between the people on the ground of gender or sex. It disparages the mentality of people who considers the gender unequal and assigns the role based on gender. Same treatment is not entertained to the people of different genders; the work is allotted solely based on anticipation. The same goes for the crime anticipation, in the cases of rape, males are the only worthy candidates. The thinking is highly influenced by the orthodox element in Indian society based on long followed traditions. In unembellished words, gender neutrality means cessation of role distribution based on sex or gender with the ultimate aim to prohibit empowerment of one gender and desensitization of other genders and to discard the thought of superiority of one gender over other. As per the Constitution of India, no discrimination can be done on the basis of sex<sup>1</sup>. According to Universal declaration of human rights no differentiation can be done between men and women<sup>2</sup>. Gender neutrality is a way to sensitize humans towards other genders in the society.

### **WHY THERE IS A NEED FOR GENDER NEUTRAL LAWS?**

Gender Equality apotheosized in our Indian Constitution in its preamble, Fundamental rights, Directive principles and Directive duties lacks ‘Gender Neutrality’. The gender neutral reforms will augment the scope and definitions of the rape and sexual assault laws to rope in the female perpetrators and give justice to the male victims. This type of reform would

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<sup>1</sup> Article 15 , Constitution of India

<sup>2</sup> Universal Declaration of Human Rights

recognize male victims of abuses in many forms and faces and also chastise the women perpetrators and affirm that women can commit a crime as serious as rape and sexual assaults. The shift of burden of proof from the prosecution to the defendant in rape law has left no scope for the men to get justice. The general principle of law states that the burden of proof is on the prosecution, but in some handpicked sections of law the burden of proof is on the accused (male). This certainly does not look like a gender neutral legal framework. The recognition of gender neutrality will abate the excruciating sufferings of the victimized male in India and other countries that lack gender sensitivity in their laws. A study was done on 97 countries around the world out of which 63 countries had gender neutral rape law while the other 27 countries had gender specific laws like India as per which a man can only rape a woman and remaining 6 countries had partly gender neutral laws as per which a man can commit rape against both male and female<sup>3</sup>.

We live in a funny world, where people are like sheep following the crowd. Earlier the trend or belief was to degrade women which people followed religiously until an intellectual group of people slapped the world with the obvious truth of life that ‘everyone is equal’. Just about when the bar of equality was stabilizing in conformity with gender neutrality, a new trend took the world by storm with now the male victims on the edge of the knife. Sexism has penetrated our legal system, with postulated mindset that men are always guilty, that crime against men is not that big a deal, that men cannot be raped. If a man dares to complain about being stalked or sexually abused by a woman, his remaining dignity is scraped off by the phrases like ‘be a man’ and ‘don’t be such a girl’. Our legal system has beautifully drafted the atrocious laws for men where by just a ‘100’ call could land a clean handed male into the prison for a considerable time. If striking a balance in the society of legions with distinct genders was the aim, then the effort was in futile. Nothing can be more erroneous than the fact that the legal system which was meant to be a shield for the women of our country against the perpetrators, is being used as a weapon against the men of our country. Former Supreme Court Judge, KT Thomas pointed out, *“Whenever you make a law very stringent on account of pressures from emotionally surcharged social reactions, there is a real danger of its misuse.”* Yes, we do understand the need to empower women because of the horrendous past that our country has encountered, but the time when women were not allowed to speak, share their thoughts or act out of their own will has surpassed us so much so that now the most

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<sup>3</sup> The source for this data is the Penal or Criminal Code of each country. The countries that were not studied usually had inaccessible criminal codes or inconsistent laws across states, like in the United States.

hon'ble positions are held by the most deserving women candidates. No barriers have been set for females, and moreover they are provided with the special status and on top of that no one seems to be questioning the validity of women's accusations. Being gender neutral is when you celebrate both heroes and she-roes with equal respect, no pun intended. But the scale has been set right; there are no more rules/laws that are acting against the welfare of women. Pro women laws are turning out to be a nightmare for the male species, the gender biased laws like section – 497, 498a of Indian Penal Code, 125 CrPc<sup>4</sup>, Domestic Violence act 2005 and Dowry Prohibition act are legally authorized men destruction weapons in the hands of disgruntled, revengeful female perpetrators. The laws in India are not gender neutral, but gender specific which gives an impression of gender inequality. The overlooked presence of the transgender, including hijras (Indian context), cross-dresser, a gender and many more who do not fall under the category of either male or female is obnoxious to the very core of the humanity. The absence of sufficient laws and provisions for sexual minorities (transgender community) creates gender inequality. Due to lack of social recognition of sexual minorities they are not socially accepted hence they don't play similar roles as compared to majority of gender which ultimately does not earn them the right to be protected by the laws. Albeit steps have been taken to right the wrong, like when the Supreme court gave recognition to transgender by giving them the tag of 'third gender'<sup>5</sup> and the mere introduction of the bill<sup>6</sup> towards the empowerment of the transgender community although the bill stinks of callousness and ignorance. The law on throwing acid has been made neutral by adding the expression 'whoever'<sup>7</sup>. Keeping in light of all the facts it can be said that India is taking baby steps towards attaining gender neutrality.

## INDIAN LAW: CURRENT SCENARIO

### *Rape & Sexual assault laws*

Indian rape law is the perfect candidate for showcasing the lack of gender neutrality in India. As per the provisions laid down in the Indian law, only a man can rape a woman in India. As per section 375 and 376 of Indian Penal Code a man can only be punished for committing rape against a woman in India along with this there are other gender specific laws such as

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<sup>4</sup> Code of Criminal Procedure, 1973

<sup>5</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

<sup>6</sup> The Transgender persons (protection of rights) bill, 2016

<sup>7</sup> Section 326, The Criminal Law Amendment Act of 2013

laws relating to sexual harassment<sup>8</sup>. As per section 375 of Indian Penal Code any type of sexual offences against females is only considered as rape in India. No laws regarding the rape of a male by another male or rape of male by a female or rape of a male by transgender or vice-versa are made. None of these rapes are covered under the ambit of section 375 of Indian Penal Code neither any relief is granted for the same nor has any punishment been prescribed for the same. The 'Right to Equality' as inscribed in Article 14 of our Constitution is in violation if not enough steps are taken to deal with the men related crimes. The Delhi-based Centre for Civil Society found that approximately 18% of Indian adult men surveyed reported being coerced or forced to have sex. Of those, 16% claimed a female perpetrator and 2% claimed a male perpetrator<sup>9</sup>.

Males are always expected to be sexual offenders, immaterial of the fact that they can be victim as well. A male being a victim of rape by another male or a female has no legal provisions to complain against the offenders and get them punished. Neither any provision is made for the rehabilitation of male rape victims or counseling of the male victims. Even when the accused is acquitted, the stigma does not obliterate that easily and the media coverage destroys the self-esteem, confidence and in some cases the tortured, abused victim falls into psychotic disorders. The social ridicule haunts the falsely accused male victim for decades. The section 377 of IPC does not define male rape it only deals with unnatural sex that covers carnal intercourse that is against the order of nature with a man or a woman<sup>10</sup>. By the virtue of section 375 and section 377 of IPC homosexuals, transgender and transsexual people have no legal mechanism to deal with rape except where it can be brought under the ambit of section 377 IPC.

### *Rape of Men and Transgenders*

In India it is unfortunate that rape of male by another male and voluntary sexual intercourse between homosexuals is jointly brought under the ambit of section 377 of IPC. A clear cut definition in Indian law must severalize between coercive sexual intercourse and consensual sexual intercourse among the homosexuals.

*"He was being raped by 6 drunken males while being verbally and physically assaulted for being gay. Vinodhan was the victim here he was even filmed by the offenders he could not*

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<sup>8</sup> Section 354, The criminal law amendment Act of 2013

<sup>9</sup> Retrieved from <http://ccs.in/indias-law-should-recognise-men-can-be-raped-too>

<sup>10</sup> Section 377 of IPC

*even go to police for help as there was no law to deal with it and he thought he will be blamed for being gay”<sup>11</sup>*. Due to the stigma of being criticized by the Indian society for being gay in India People like Vinodhan cannot come out as male victims of rape

The minimum punishment for rape as per the Indian rape law (Criminal Amendment Act of 2013) is 7 years which may extend up to sentence for life <sup>12</sup> whereas per section 377 no minimum punishment is prescribed for forced sexual intercourse between two males. If a minimum punishment for a particular crime is awarded in Indian law it means the crime is heinous in nature, but not setting minimum punishment in section 377 for an offence otherwise considered as heinous, gives an impression of non-serious crime as in Indian law male on male rape is not considered so it is not considered as rape. This fact itself shouts the status of gender neutrality in Indian rape laws. To bring the sexual assault on males, transsexuals, transgender and homosexuals under Indian Rape law, 3 members Justice Verma committee<sup>13</sup> recommended to make victims gender inclusive so that it can include all above mentioned. Ms. Ratna Kapoor Professor of law at Jindal Global Law School and Advocate/Plaintiff in *Ratna Kapoor versus Suresh Kumar Kaushal* held section 377 of IPC as unconstitutional, with an ultimate aim of making stronger gender neutral law writes *“criminalizing non-consensual sex regardless of gender can only work if sexual minorities are granted the right to have consensual sex in the first place”<sup>14</sup>*. It means that making criminal of non-consensual sex will only come in to force if sexual minorities like gays , lesbians , bisexuals , transsexuals and transgenders are given right to have consensual sex as changes in law as suggested by Justice Verma Committee can further lead to harassment of sexual minorities in India.

As per Flavia Agnes Senior lawyer at Bombay High Court, the importance of providing security to LGBT community against the violent acts of heterosexual men and other homophobic people holds great significance as the current law in force does not have any provision to provide security to the sexual minorities.

Siddharth Narain addressing non woman rape victims of India has put on a question to Indian Society *“who is to say that the sexual humiliation suffered by the transgender person and men, and by those intersex persons and sexual minorities not born woman, is a lesser*

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<sup>11</sup> Menon P, *Lacking support male victims stay silent*, The times of India

<sup>12</sup> Section 376, IPC

<sup>13</sup> Justice Verma Committee Report

<sup>14</sup> Ratna Kapoor, *The new sexual security regime*, The Hindu

*violation of personal and inner space, a lesser injury to mind, soul, spirit and sense of a self*<sup>15</sup>”, this is absolutely true that the rights of transgender people, intersex and sexual minorities are kept at bay by the current law.

### *Dowry*

One of the most unbridled abused laws in India, the anti-dowry laws is turning out to be anti-men laws. With more than 10,000 false cases registered every year, the law-abiding husbands and their innocent family members land in prison. In a recent order, the Supreme Court had said Section 498A had “*dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives*”<sup>16</sup>. If a wife dies within 7 years of the marriage, the husband is beyond any reasonable doubt considered as the murderer. This social evil must be destroyed before it destroys the sacred concept of marriage.

## **INITIATIVES TOWARDS PROMOTION OF GENDER NEUTRALITY**

### *Supreme Court on Transgender*

In the case of *National Legal Service Authority v. Union of India*<sup>17</sup>, Justice KR Radhakrishnan declared transgender as the Third Gender in India. The verdict was revolutionary as it was the 1<sup>st</sup> step in India taken by the Judiciary to give social recognition to transgender people of India and to give them equal status so that they can be uplifted and to cease all the sufferings they encounter.

### *UGC Notification 2016*

The University Grants Commission of India notified that laws governing sexual harassment would be considered as a gender neutral law. The law which was notified by the UGC Regulations on Sexual Harassment Prevention and Prohibition has made the offence of sexual harassment a gender neutral law as the new notification give protection to both the sexes against sexual harassment.

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<sup>15</sup> Narain S., *Crimes of Exclusion*, The Indian Express

<sup>16</sup> *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273

<sup>17</sup> 2014) 5 SCC 438

In another instance, gender neutrality can be seen, where the Delhi High Court Rejects a plea of a wife demanding increase in maintenance, on the mere ground that the husband was residing in Dubai and earning there in local currency at Dubai<sup>18</sup>.

On demand of a student of NALSAR Law University in Hyderabad, a gender neutral graduation certificate was issued as the student wanted to be identified as “Mx” instead of “Ms or Mr”<sup>19</sup>. The request was made by Anandita Mukherjee and the same was duly considered. Historically NALSAR became the first education institute in whole of the India to issue a gender neutral graduation certificate.

In the case of *Narendra v. K Meena*<sup>20</sup> it was held by apex court that repeated efforts of a wife to influence her husband to get separate from parents will amount to “cruelty” and can be a ground for seeking divorce, rarely these kind of verdicts come from Indian Judiciary which makes it clear that married men can also be subjected to cruelty. In this verdict it can be clearly seen that it is influenced by the wave of gender neutrality which is moving at very slow pace.

Madhu Bai Kinnarr<sup>21</sup> was the first transgender of India to win Civic pools and was elected as Mayor, she won by 4500 votes while beating her opposition party BJP at Raigarh in the state of Chhattisgarh. A sense of developing gender neutrality can be seen by the entry of a transgender into the Indian governance and that too with a great support.

From all the above instances and examples it is clear that the sense of gender neutrality is developing among the Indian Society as it is reflected in various verdicts of Honorable Supreme Court of India and various High Courts and other occasions, though the initiatives to promote gender neutrality are very less, but like it’s said – “hope is the only thing that keeps us alive”.

## CONCLUSION

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<sup>18</sup> The Indian Express, Retrieved from <http://indianexpress.com/article/india/india-news-india/delhi-high-court-rejects-wifes-plea-for-enhanced-maintenance-from-husband-3082350/>

<sup>19</sup> The Indian Express, Retrieved from <http://indianexpress.com/article/india/india-others/1st-gender-neutral-degree-handed-out-by-nalsar-varsity/>

<sup>20</sup> *Narendra v. K. Meena*, Retrieved from <https://indiankanoon.org/doc/130314186/>

<sup>21</sup> Retrieved from <https://www.theguardian.com/world/2015/jan/05/transgender-woman-elected-mayor-india-chhattisgarh>

The truth is that the men do not feel invested enough in the legal tank of justice, moreover, they feel as if they are standing in front of the gun barrel of the justice system because it has been abundantly clear in our society that a man's mental agony is kept at bay whereas a woman's emotional hoax is at play. The need of the hour is to make immediate amendments in existing laws to make it gender inclusive in such a way that it embodies victim of all genders and no gender is deprived of the rights promised by our constitution. Section 377 of IPC needs amendment to differentiate between forced Sex (rape) and consensual sex (sexual intercourse with consent) and also the definition of rape should be widened to recognize rape between the members of same sex group and transgender. Rigorous punishments should be awarded for any act of sexual assault or rape to the perpetrators irrespective of their gender.

There is no doubt that gender inequality is ubiquitous in India from ancient times due to superiority of one gender over the other. But the people of India have started realizing the problem of gender inequality. Indian people over the time have now developed a sense of sensitivity towards other genders and now are trying to overcome the problem through small steps taken in best of their ability and domain. These steps may be very small steps to overcome gender inequality but they give a light of hope in the long lasting darkness.

The fact that the 'Gender Neutrality Revolution' has begun in India and has started growing cannot be overlooked and should be appreciated as well. The torch of gender neutrality has emerged and it needs to be carried and spread around the Indian society.