**MALE RIGHTS IN INDIA IN LIGHT OF GENDER NEUTRALITY BILL 2019**

**BY**

**C.M.VAISHNAVI**

**SECOND YEAR, B.COM.L.L.B.**

**PARUL UNIVERSITY, VADODARA**



**INTRODUCTION**

The saying has always stood perfect that “Changing times and their outcomes provide an insight to anything irrespective of procuring something good or preventing the occurrence of an evil in advance”. Likewise, we have witnessed many things which are very influential in the modification of the society. One of the most controversial issues from the ancient times to this modern world has had the provocation for the existence of gender neutral rights. There has always existed a segment where people have fought in order to treat them equal. The Criminal (Amendment) Bill, 2019 was introduced in the Parliament by Mr. KTS Tulsi (Member of Parliament and Advocate, Supreme Court of India)[[1]](#footnote-2). The motto of this bill was to make the Sexual Crimes gender neutral. The bill was previously introduced in 2012 and it was dismissed in 2013 when it was said by the Ministry of Home Affairs in a PIL that only a man can be a perpetrator and not a victim. This bill aims for the equal treatment of males as well as transgenders where only females were entitled to file a suit if they were sexually harassed or abused by inserting a new Section 375A in IPC and making modifications in the Indian Penal Code, Code of Criminal Procedure and The Indian Evidence Act. The section would use the phrase “Whosoever” rather than employing a “man” or “woman”.

**WHAT IS GENDER NEUTRALITY BILL?**

The term Gender Neutral means the ideology where the policies, language, and other social institutions should avoid distinguishing roles according to people's sex or gender, in order to avoid discrimination arising from the impression that there are social roles for which one gender is more suited than another[[2]](#footnote-3). In other words, all the gender should be treated equally. The Indian Constitution under Article 15 embodies that “The State shall not discriminate any citizen on grounds only of Religion, Race, Caste, Sex, Place of Birth or any of them”[[3]](#footnote-4). The Gender Neutrality Bill was introduced by Mr. K.T.S. Tulsi in the upper house of the Parliament in order to insert a new Section 375A defining “Sexual Assault” in the Indian Penal Code, 1860. The term "sexual assault" defined as "Whosoever intentionally touches the genitals, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person, without the other person's consent except where such touching is carried out for proper hygienic or medical purposes". This Criminal (Amendment) Bill,2019 would make alterations in the Indian Penal Code, Code Of Criminal Procedure and the Indian Evidence Act in order to revise the word “Man” or “Woman” to “Any person” or “other person”. It also proposes to replace the terms ‘penis’ and ‘vagina’ with “genitals”. Earlier, it was held that only a man can commit rape since it was held of the fact that only he can be the perpetrator and only the Women being the victim. This bill emphasizes various rights of a man protecting himself from False Accusation of Rape, Preventing the Male Child Abuse, Custodial Rape, Sexual abuse against youngsters, Breaking the stereotypes which a common man has as in stating that they are very strong and can never be weak and possessing a non-expressive attitude who could handle all his hurdles all alone. One of the most banal is that “No one would believe that a man too can be raped and be sexually assaulted”. The reason for introducing the bill to be gender neutral because after the historic judgement where consensual sexual intercourse between the individuals of the same sex or transgenders under Section 377 was decriminalised but Section 375 which is co-related to Section 377 recognizes only a woman can be a victim of rape and neither a transgender nor a man. This becomes an issue since the law laid down by the Supreme Court in cases recognizes consensual sex between two individuals as legal, irrespective of their sex. If this is the case, non-consensual sex has to be treated as rape and not an unnatural sexual offence.[[4]](#footnote-5) Therefore, if the offence of rape is made gender neutral, then transgenders will be recognised with their rights where they can too can be the victims of rape and also protecting a man from always not being a perpetrator but also a victim.

**HISTORY**

The concept of Gender Neutrality takes its origin from 1795 due to the disquiet in the usage of the words “he” or “she” which denotes sticking to a particular gender and which has helped in the emergence of the word “They”. Similarly, when we have a glimpse of what words we use today in law are “Woman”, “Man” for Rape rather than usage of words such as “Whosoever” or “Any Person”[[5]](#footnote-6). Earlier, a Public Interest Litigation(PIL) was dismissed by the Supreme Court headed by CJI Ranjan Gogoi and Justice S K Kaul which was filed by an NGO Criminal Justice Society of India through an advocate Ashima Mandla where she pointed out that Section 375 of IPC violates Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination on the grounds of Religion, Race, Caste, Sex or Place of birth) and Article 21 (Right to life and Personal liberty) as it does not provide punishment for the rape committed on Men and Transgenders[[6]](#footnote-7). The Judiciary in this plea held that this could be done only by the Legislature (Parliament) as there has not been any acknowledgement where a man or a transgender is a rape victim, and quoted “Men as perpetrators and Women as victims”. They referred to the case Navtej Singh Johar VS. Union of India where it was pronounced to decriminalise Unnatural Offences (Section 377 IPC). In the 172nd report of the Law Commission of India, 2000 headed by Justice B P Jeevan Reddy[[7]](#footnote-8) suggested that the modifications made by them in Section 375 IPC should be effected by the deletion of Section 377 IPC. After a decade, a Criminal (Amendment) bill, 2012 was introduced in the Parliament to revise the already existing definition of Rape to be Gender neutral and it was again dismissed by The Criminal (Amendment) bill, 2013. The national outrage which took place post Nirbhaya Rape case, the J S Verma Committee made the punishments more stringent for Gang Rapes and all forms non-consensual intercourse. Before the Criminal (Amendment) Bill, 2013 it excluded many females who have been victims of any form of non-consensual penetration in the past and it also debarred many males who have been victims of non-consensual anal penetration[[8]](#footnote-9). A petition filed by an advocate Sanjiv K Kumar challenged the constitutional validity of Sections 375 and 376 IPC. The centre through the Ministry of Home Affairs denied the sections to be gender neutral as the predominant perpetrator was a man and not a woman. The predominance of a man has been shown in many sexual crimes such as Rape, Stalking, Voyeurism and Sexual harassment. The FIR (First Information Report) for these sections can be filed only by a woman. The other sections like 498A are also gender specific as it protects a woman from the cruelty from her husband and also from the husband’s relatives[[9]](#footnote-10). Later on, the Criminal (Amendment) Bill, 2019 was introduced by Mr. K.T.S Tulsi.

**MALE RIGHTS IN GENDER NEUTRALITY BILL**

1. **False Accusation of Rape**

Most of them claim that Section 375 of IPC is gender biased since it does not identify where men too can be the victim. It just provides the right for a female to claim a rape suit. In 2017, a Delhi based man named Yogesh Gupta, aged 44 was falsely accused of rape by a female whom he found her pilfering the money from the company’s account[[10]](#footnote-11). As soon as the female filed a rape case, the Police/ the investigating officers didn’t even listen what Yogesh Gupta has done. After many trials Mr. Gupta proved his innocence until the female said she has lied. Yogesh Gupta in the case said that this has affected his social status as he cannot prove his innocence to every person because people judge very quickly in cases like rape without knowing whether he is guilty or not[[11]](#footnote-12). This is one of the recent incidents which took place in Delhi. There are many cases which don’t even come to the light of law until the man commits suicide. Apart from this, the distress which the family of the innocent passes through has a greater extent and the restoration (which is a victim oriented theory of punishment) of the accused who is a victim here is hectic many a times. The other data suggests that a man is falsely accused of rape in order to take revenge on him or to take away more money from them. Few of the men’s rights groups, activists and lawyers believe that false accusation of Rape is found mostly in the cases of consensual relationships and a woman files a case where these relationships end. Nowadays, whenever a rape case is filed, the Judges are ensuring whether a woman driven by revenge and self interest are not making any false allegations when those relationships end[[12]](#footnote-13).

1. **Male Child Abuse and Sexual abuse against youngsters**

In a survey conducted by the Ministry of Women and Child Welfare[[13]](#footnote-14) in 2007, it came to their notice that 53.22% of children faced one or more form of sexual abuse. Out of that, the no. of boys composed of 52.94%. The 3 out of 27 cases of sexual abuse were at its peak. The 3 children had a similar issue of irregularity in attending the school, constant fever, constipation, sleep disturbances, reduction in social interaction, academic decline, etc.

The first case was of a boy who was performing fellatio on an elder boy who was known for his petty crimes in that area. This was noticed by his elder brother and informed the same to his family members. The father of that child refused to file a case under POCSO Act because they didn’t have any forensic report nor they could get the video which was deleted. The father of that child has said that “he neither lost a hymen nor he will get pregnant, he is a man and not a sissy”.

The second case included a child with complaints of high fever and excoriation in the anal region etc. He had faced anal penetration in his school by two elder boys. The father of the child filed a case and later on was planning to shift to his hometown as he lost his job because of the disgrace of litigation.

In the third case, a boy of another country lived in an orphanage as his mother already died and his father took him home once in a week. He was being bullied by an older boy sexually. The reason behind that was jealousy as the younger boy excelled in all his activities. He had advantages over many things because he was good at spoken English, could play piano and was a favourite student to all the teachers. This made the older boy to sexually abuse him and in addition to that he had no father and her mother visited him once in a year with no gifts.

The conclusion which was drawn from these 3 cases was “Patriarchy is oppressing a male child to seek psychiatric help. Apart from that, there are many issues such as even after enforcing a separate act for children facing sexual abuses and assaults are still unable to seek proper justice. In a similar way, it is possible for the males of any age to face some or the other sort of sexual assault. So, it is necessary for the males and transgenders to make the rape laws gender neutral.

1. **Resistance to gain parental rights**

There can be cases where a raped woman is married to the offender in order to protect her stigma towards the society but is there any law which protects a male resisting from gaining parental rights to the offence which is not committed by him? If in such case, if he lacks in proving that he is not guilty of rape, then that may cause becoming an obstacle to the one who will hold title where he has not committed anything. For such circumstances, gender neutral laws play a crucial role in it where both the genders can be treated equally.

1. **Custodial Violence**

Usually, there are chances that males might be tortured during police or under judicial custody when known they have committed a rape unless the same has been not proved that he is the offender of the rape. In such cases, the human and fundamental right of the male gender is violated. Before any offence has been proven, he would always possess with a disadvantage of being tortured in the case of false accusation of rape.

1. **Breaking the Stereotypes**

Generally, it is assumed that a male cannot be raped and he is not a victim as an outcome of a sexual intercourse. The reason behind this is lack of acknowledgement of male rape victims in the past, the existence of dominance in patriarchy and the customs and traditions which were practised earlier. Now from the phase where we started adopting western culture, many have realized that apart from only one thing happening, there can be various consequences of the same event. At first thing, males are considered to be brave and they possess a no fear characteristic which is what known to us but there are flaws where they should also be protected as a human being. Mostly, males are being faced with anal and oral penetration in daily lives. Secondly, if any of the aforementioned things happen to them, few of them are not acknowledged or else where the things are acknowledged to an enforcement authority, they are unable to come to a conclusion whether men can be a victim of rape. The other case can be even if the enforcement authorities accept that a male can be raped, they do not know under which section they can file a suit. Therefore, it results in a situation where most of them do not believe a man can be raped.

**THE ARGUMENTS IN FAVOUR OF GENDER NEUTRALITY BILL, 2019**

The Gender neutrality in the context of sexual crimes refers to the concept where woman, men and transgenders can either be perpetrators or victims. Crime conflicts with the social interests of the society. Similarly, the definition of rape has been changing from time to time. Before the December Delhi’s gang rape (Nirbhaya Rape) case, it simply included penile – vaginal penetration but after the Criminal (Amendment) 2013, it included all forms of penetration in vagina, mouth, urethra, anus, etc. but the definition is gender specific as it considers rape can be committed only by a male and not a female. There was a case where a woman filed a suit against another woman for abetting the rape. In the Indian scenario, it includes only male on female rape and not male on male rape, female on male rape and female on female rape. The arguments in favour of male rights in gender neutrality are-

**Recognising male’s human rights and fundamental rights**: The Article 14 of the Indian Constitution confers Equality before law. It states that “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. For example – If we refer to a particular class (gender) of people[[14]](#footnote-15), all must be treated and protected equally. Similarly, Article 15 of the Indian Constitution confers “Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth”. Females are provided equal protection of safety under Article 15 of the Indian Constitution. So, when referring to the protection given to them i.e., to a particular gender of the society, the other genders (Male & Transgenders) should also be given the same safety. Earlier, the laws were made gender-specific in order to improve the position of women in the society but so far after stringent laws, females are protected.

**Protecting a man from always not being a perpetrator**: In the Indian context, it is seen that only a man possesses the ability to rape and not a female. That is why, a man is always held as a perpetrator and not a victim in the eyes of law. There are instances where every 1 out of 6 in male’s population faces sexual assault in America. John Kelly, who was a student of Tufts University was raped by his former male partner and therefore he raised the issue before United States congress on same-sex violence in 2014. Similarly, in 1996 the issue of gender neutrality in rape laws was first raised in Sudesh Jhaku Vs. K C Jhaku by Jaspal Singh, Justice of Delhi High Court[[15]](#footnote-16). In that case, it was questioned whether before Criminal (Amendment), 2013 the definition of rape included non – penetrative sexual acts or not and this case made a turning point for the scope of gender neutrality in Rape as it was the only source to claim for a sexual assault. Here, Justice Jaspal quoted a following passage from a California law review:

“Men who are sexually assaulted should have the same protection as female victims, and women who sexually assault men or other women should be as liable for conviction as conventional rapists. Considering rape as a sexual assault rather than as a special crime against women might do much to place rape law in a healthier perspective and to reduce the mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions”[[16]](#footnote-17).

**Protects the male gender from being sexually assaulted**: The landmark judgement of Navtej Singh Johar Vs. Union of India recognized the rights of the transgenders and decriminalized consensual homosexuality. Prior to the insertion of Section 375A IPC, the sexual assault of males was not acknowledged which was one of the reasons why judiciary could not interpret sexual crimes as gender neutral. Now, after the insertion of this section, males who are being sexually assaulted can immediately file a case. The reason behind males were not filing a suit for their sexual assault in the past might be of the fact that no one would believe a man being raped in a patriarchal society and lack of such laws had no grounds for protecting themselves. But now, this law is going to create an impact when some population of men open up that they were sexually assaulted previously. The most sexually assaulted population of the male gender are children and youngsters (teenagers). Though there are other acts such as Protection of Children from Sexual offences (POCSO) to protect the children from sexual assaults but this law can be particularly applicable to everyone dealing with all the sexual assaults.

**THE ARGUMETS AGAINST THE GENDER NEUTRALITY BILL, 2019**

The bill has faced many oppositions starting from the year 2012 when the bill was introduced for the very first time where the offence of rape was to be made gender neutral and the word “rape” to be replaced with “sexual assault”. This bill had resistance from the advocates of various parts of the country and majorly from woman groups. A Mumbai advocate Flavia Agnes said that they have had opposed even when the child rape laws were made gender neutral. She even mentioned that many of the western countries too adopted it in making the rape laws gender neutral and simultaneously they have witnessed that women are aggrieved again as compared to men. The offence of rape itself shows physicality in its definition which talks about the dominance of a specific gender and the aggrieved has an injury to her stigma. If these laws were made gender neutral, then it would become difficult for the judges to interpret a particular case and the probability of seeking justice becomes less in number and a woman has to battle both social stigma and social mindset. [[17]](#footnote-18)

Another Delhi based advocate Vrinda Grover said that “There are no instances where a woman has raped a man”. She even mentioned that no man is facing sexual violence as faced by a woman and the intensity of sexual violence faced by a woman is at a much higher rate. The other reason for not considering rape to be gender neutral, it is because very few or none of them are acknowledged to the courts.

The following are few of the reasons why this bill is being opposed to make the laws gender neutral-

**Female- on- Male rape is far away from the reality:** As advocate Agnes said, there are no instances where a man is raped by a woman. The lack of female on male rape in the statistics and survey’s depicts that a country with no such issue needs any law in advance. Though there are cases in the western countries such as USA where every 1/6 males faces sexual assault by a female but a country like India has no such issue and inversely females are raped on daily basis.

**Anal and oral penetration cannot be considered as Rape:** The Criminal (Amendment) 2013 brought various forms of penetration but even today many of them consider only penile-vaginal penetration as rape and not anal or oral penetration. Most of the cases which includes anal penetration is faced by children and youngsters but for them POCSO Act has already been made gender neutral. Apart from that anal penetration is possible only if the offender is a male and there is it provides no ground for a female to be an offender in this situation.

**Victimization[[18]](#footnote-19) of females is possible:** It was difficult even when the rape laws were not gender neutral and if at all it is made, the sufferer would be females at most of the times. It is always possible for the offender to question on a woman even if she has not committed anything. There are chances that the offenders would easily set free rather than they being put behind the bars. When a woman approaches a court, she always steps in with a mindset how will the society consider, how is she going to tackle all the situations and how will she prove her innocence to everyone.

**CONCLUSION**

The rape of males in India is underreported and for this reason, some activists and research organizations, including Jai Vipra at New Delhi think-tank Centre for Civil Society pleaded sexual crimes such as rape to be made gender neutral. If they are made gender neutral, not only males but also transgenders shall have a right to claim as a pathway to seek justice.[[19]](#footnote-20) When establishing a sexual crime to be gender neutral, it implies that any gender of the society can have easy access to justice and the discrimination of any specific gender in respect of sexual crimes comes to an end. The statistics even proves that sexual assault cannot be faced only a particular gender but the sexual assault of all the genders is possible. The reason for the occurrence of any crime is due to the changes taking place in the society. When everyone is treated equally, it satisfies the very basic nature of the Constitution.

“I am a phenomenal woman, I know. But all I want is gender neutrality in every walk of life, since equality is equally phenomenal”- By Sneha Sahu.

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**ABOUT THE AUTHOR**

C.M.Vaishnavi is pursuing B.COM.L.L.B. from Parul University, Gujarat. She is currently the member of Journal & Publications Committee at her University. She holds a strong academic background and she has presented various research papers and few of them are yet to be published. She has published her articles in the various legal platforms of India. She has participated in various National Moot Court Competitions and Judgement Writing Competitions. She was felicitated with the Best Memorial Award of LJ National Moot Court Competition, 2019. She has a keen interest in Politics, Business laws and is trying is set up legal platforms through which she can provide legal aid to the various sections of the society. She wants to be a part of the prestigious Indian Administrative Service.

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