

Gender Neutral Rape Laws in India: A Comparative Analysis with the United States and the United Kingdom

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Abstract

The legal understanding of rape has undergone significant transformation across jurisdictions, yet in India it continues to be rooted in a gender-specific framework that recognizes only women as victims and men as perpetrators. This dissertation undertakes a detailed doctrinal and comparative analysis of gender-neutral rape laws, examining the Indian legal framework alongside developments in the United States and the United Kingdom. It argues that the current Indian position is constitutionally inconsistent and socially inadequate, as it excludes male and transgender victims from legal protection. Through an analysis of constitutional provisions, judicial pronouncements, sociological theories, and international practices, this research highlights the urgent need for reform. The study concludes that adopting gender-neutral rape laws is essential for ensuring equality, dignity, and access to justice for all individuals, regardless of gender.

Keywords: Gender-neutral rape laws, sexual offences, male victims, transgender rights, constitutional equality, Article 14, Article 21, consent, comparative law, United States, United Kingdom, criminal law reform, victim justice, bodily autonomy, legal inclusivity.

Chapter 1: Introduction

The concept of victimhood in criminal law is expansive and encompasses any individual who suffers harm as a result of a criminal act. Such harm may be physical, psychological, emotional, or economic in nature. Indian law, through statutory recognition, acknowledges victims in a broad sense; however, when it comes to sexual offences, particularly rape, the legal definition remains narrowly confined within a gender-specific framework. Traditionally defined under Section 375 of the Indian Penal Code and now retained in substance under the Bharatiya Nyaya Sanhita, 2023, rape is conceptualized as an offence committed by a man against a woman. This formulation inherently excludes male and transgender victims, thereby creating a significant gap in legal protection. This exclusion becomes particularly problematic when examined in the context of constitutional guarantees. Articles 14, 15, and 21 of the Constitution of India collectively ensure equality before the law, prohibit discrimination on grounds of sex, and guarantee the right to life and personal liberty, including dignity and bodily integrity. Despite these provisions, the statutory framework governing rape fails to extend equal protection to all individuals. While children of all genders are protected under the gender-neutral Protection of Children from Sexual Offences Act, 2012, adult male victims are left without a comparable legal remedy once they attain the age of majority.

The issue is further compounded by societal perceptions of masculinity, which often discourage male victims from reporting sexual violence due to stigma, shame, and fear of ridicule. The legal invisibility of male victims reinforces these societal barriers, creating a cycle of underreporting and denial of justice. In contrast, jurisdictions such as the United States and the United Kingdom have recognized the need for gender-neutral rape laws and have accordingly reformed their legal frameworks to accommodate all

victims. This research seeks to examine the conceptual, legal, and social dimensions of gender-neutral rape laws, with a focus on identifying the shortcomings of the Indian legal system and exploring potential reforms. It argues that rape should be understood as a violation of bodily autonomy and personal dignity, rather than as a gender-specific offence. By adopting a comparative approach, the study aims to demonstrate that gender-neutral laws are not only feasible but also necessary for achieving substantive equality and justice.

The central problem addressed in this research lies in the inadequacy of the Indian legal framework to address sexual violence in a gender-neutral manner. While the law provides extensive protection to female victims, it simultaneously excludes male victims and fails to criminalize marital rape. This dual exclusion undermines the fundamental rights of individuals and reflects outdated patriarchal assumptions. The research is guided by key questions relating to the concept of gender neutrality, the impact of gender-specific laws on victim recognition, and the comparative effectiveness of legal frameworks in other jurisdictions. The scope of the study is confined to doctrinal analysis, relying on statutes, case laws, and scholarly literature. It incorporates comparative insights from the United States and the United Kingdom, which share adversarial legal systems similar to India. While the study does not include empirical data, it draws upon existing research to highlight the prevalence and challenges of male victimization.

Chapter 2: Conceptual Framework of Gender-Neutral Rape Laws

The concept of gender-neutral rape laws emerges from the broader principle that criminal law must protect all individuals equally, irrespective of gender identity. Traditionally, rape has been understood as a gender-specific crime, rooted in patriarchal assumptions that position women as victims and men as perpetrators. However, contemporary legal and sociological developments have challenged this narrow understanding by recognizing that sexual violence is not confined to any single gender. Instead, it is an act of power, coercion, and violation of bodily autonomy that can affect individuals across all gender identities. At its core, gender neutrality in rape laws seeks to eliminate discrimination by ensuring that legal definitions and protections are not restricted by gender. This approach is grounded in constitutional principles of equality and non-discrimination, as well as international human rights norms that recognize the inherent dignity of every individual. By adopting gender-neutral language, the law acknowledges that both men and women, as well as transgender and non-binary individuals, can be victims or perpetrators of sexual violence.

A key element in understanding gender-neutral rape laws is the shift from a gender-based definition of rape to a consent-based framework. Modern legal systems increasingly define rape in terms of the absence of free and voluntary consent, rather than the gender of the parties involved. This shift reflects a more accurate understanding of sexual violence as a violation of personal autonomy and bodily integrity. It also allows for a more inclusive legal framework that captures a wider range of abusive conduct. The evolution of gender-neutral laws is closely linked to changing social realities and increased awareness of diverse victim experiences. Empirical studies and victimology research have demonstrated that male and transgender individuals also experience sexual violence, although such cases are often underreported due to stigma and lack of legal recognition. The invisibility of these victims in traditional legal frameworks highlights the limitations of gender-specific laws and underscores the need for reform. Another important aspect of the conceptual framework is the distinction between formal equality and substantive equality. While formal equality requires that laws apply equally to all individuals, substantive equality recognizes that different groups may require different forms of protection to achieve real equality. In the context of rape laws, this raises important questions about whether gender-specific provisions, originally designed to protect women, inadvertently exclude other victims. Gender-neutral laws aim to strike a balance by providing equal protection without disregarding the specific vulnerabilities faced by different groups. The concept also engages with debates surrounding power dynamics and the nature of sexual violence. Scholars increasingly argue that rape should be understood not as a crime driven solely by sexual desire, but as an assertion of dominance and control. This perspective challenges traditional gendered narratives and supports the argument for a more inclusive legal approach. By focusing on coercion, consent, and abuse of power, gender-neutral laws better capture the realities of sexual violence.

Furthermore, the recognition of gender diversity has played a crucial role in shaping contemporary legal discourse. With the growing acknowledgment of transgender and non-binary identities, it has become imperative for legal systems to move beyond binary classifications. Gender-neutral rape laws are therefore essential for ensuring that individuals who do not fit within traditional gender categories are not excluded from legal protection. Despite its advantages, the concept of gender neutrality is not without challenges. Critics argue that gender-neutral laws may dilute the focus on violence against women, which remains a significant social issue. However, proponents contend that inclusivity does not come at the cost of protection; rather, it strengthens the legal framework by addressing all forms of victimization. The objective is not to replace protections for women, but to expand them to include all individuals who may be affected by sexual violence.

In conclusion, the conceptual framework of gender-neutral rape laws represents a progressive shift in criminal jurisprudence. It aligns legal definitions with constitutional values, human rights principles, and contemporary social realities. By focusing on consent, autonomy, and equality, gender-neutral laws provide a more comprehensive and just approach to addressing sexual violence. This framework forms the foundation for analyzing the existing legal structure in India and comparing it with international practices in subsequent chapters.

Chapter 3: Research Design, Methodology and Theoretical Framework

3.1 Need of the Study

The need for the present study is deeply rooted in the structural and conceptual limitations of the Indian legal framework governing sexual offences, particularly rape. While Indian criminal law has evolved through various amendments and judicial interpretations, it continues to retain a gender-specific definition of rape that recognizes only women as victims and men as perpetrators. This restrictive approach fails to account for the changing realities of society, where sexual violence is increasingly understood as a crime that transcends gender boundaries. The persistence of such a framework raises serious concerns regarding its constitutional validity, social relevance, and effectiveness in delivering justice.

One of the primary reasons necessitating this study is the inconsistency between statutory law and constitutional principles. The Constitution of India guarantees equality before the law and equal protection of laws under Article 14, prohibits discrimination on the grounds of sex under Article 15, and ensures the right to life and personal liberty under Article 21. These provisions collectively establish a legal obligation on the State to provide equal protection to all individuals, irrespective of gender. However, the gender-specific definition of rape creates a legal hierarchy of victimhood, wherein certain individuals are recognized and protected, while others are excluded. This exclusion not only undermines the principle of equality but also violates the dignity and autonomy of those who are denied legal recognition.

Furthermore, the need for this study is accentuated by the growing recognition of male and transgender victimization in both national and international discourse. Empirical studies and victimological research have demonstrated that men and individuals belonging to the LGBTQ+ community are also victims of sexual violence.

Despite this, the absence of legal provisions addressing their victimization results in a significant protection gap.

The lack of recognition discourages reporting, perpetuates stigma, and ultimately leads to the denial of justice. This gap is particularly evident in the Indian context, where societal norms surrounding masculinity and gender roles further exacerbate the invisibility of male victims. Another critical factor necessitating this study is the evolving legal landscape in India, particularly following the decriminalization of consensual same-sex relations and the recognition of transgender rights. While these developments represent significant progress in the realm of individual rights and freedoms, they have not been accompanied by corresponding reforms in sexual offence laws. The repeal of provisions that previously addressed certain forms of non-consensual acts has created a legislative vacuum, leaving male and transgender victims without adequate legal remedies. This inconsistency highlights the urgent need for a comprehensive re-evaluation of existing laws.

In addition, the comparative perspective provided by jurisdictions such as the United States and the United Kingdom further underscores the necessity of this study. These countries have adopted gender-neutral approaches to rape laws, focusing on consent and coercion rather than gender. Their legal frameworks demonstrate that it is both possible and effective to create inclusive laws that protect all victims without undermining the protection afforded to women. By examining these models, the study seeks to identify best practices and assess their applicability in the Indian context. The need for this research is also reinforced by the broader objective of aligning domestic laws with international human rights standards. Various international instruments emphasize the importance of equality, non-discrimination, and the protection of all victims of violence. India, as a signatory to several of these instruments, has an obligation to ensure that its legal framework reflects these principles. In light of these considerations, the present study is essential to critically examine the existing legal framework, identify its shortcomings, and propose reforms aimed at achieving a more inclusive and equitable system of justice. It seeks to contribute to the ongoing discourse on gender neutrality in law and to advocate for a shift from a genderspecific to a victim-centric approach in addressing sexual violence.

3.2 Nature and Scope of the Study

The present research is doctrinal in nature, focusing on a systematic and analytical examination of legal principles, statutory provisions, and judicial interpretations related to rape laws. The doctrinal approach is particularly suited to this study, as it allows for an in-depth analysis of the existing legal framework and its alignment with constitutional and human rights principles. The scope of the study is both analytical and comparative. It involves a detailed examination of the Indian legal framework, including historical developments, legislative reforms, and judicial approaches to sexual offences. The study also extends to a comparative analysis of rape laws in the United States and the United Kingdom, which have been selected due to their progressive approaches to gender neutrality and their structural similarities to the Indian legal system. In addition to legal analysis, the study incorporates theoretical and sociological perspectives to provide a holistic understanding of the issue. It examines the role of societal attitudes, cultural norms, and gender stereotypes in shaping legal responses to sexual violence. However, the scope remains primarily focused on legal and policy-related aspects, and does not include empirical fieldwork or psychological analysis.

3.3 Sources of Data

The research is based on secondary data derived from a wide range of authoritative sources. These sources are carefully selected to ensure accuracy, credibility, and relevance to the subject matter. Primary sources constitute the foundation of the study and include statutory enactments, constitutional provisions, and judicial decisions. Key legislations such as the Indian Penal Code, 1860, and the Bharatiya Nyaya Sanhita, 2023, are analyzed to understand the evolution and current state of rape laws in India. The Protection of Children from Sexual Offences Act, 2012, is also examined as an example of a gender-neutral legal framework

within Indian law. Judicial decisions from the Supreme Court and High Courts are studied to understand the interpretation and application of these laws.

Secondary sources include scholarly books, journal articles, research papers, and legal commentaries that provide critical insights into the subject. Reports of the Law Commission of India and the Justice Verma Committee are particularly significant, as they offer detailed recommendations for reform. International publications, academic writings, and online legal databases further supplement the analysis by providing comparative perspectives and contemporary developments. The use of diverse sources ensures a comprehensive understanding of the issue and allows for a balanced and well-informed analysis.

3.4 Theoretical Framework

The theoretical framework of this study is interdisciplinary, drawing upon constitutional theory, feminist jurisprudence, and victimology to provide a comprehensive analytical foundation. The constitutional framework serves as the primary basis for evaluating the legality and validity of rape laws in India. It emphasizes the principles of equality, dignity, and personal liberty, and examines whether the existing legal provisions are consistent with these principles. The concept of substantive equality is particularly important, as it requires the law to address structural inequalities and ensure real, rather than merely formal, equality. Feminist jurisprudence provides a critical lens for analyzing rape laws, highlighting the historical context in which these laws were developed and the need for protecting women from sexual violence. At the same time, contemporary feminist theory recognizes the importance of inclusivity and intersectionality, advocating for legal frameworks that address the needs of all victims without reinforcing stereotypes or exclusions. Victimology focuses on the experiences of victims and the role of the criminal justice system in addressing their needs. It emphasizes the importance of recognizing diverse forms of victimization and ensuring that legal definitions and remedies are inclusive. This perspective is particularly relevant in the context of gender-neutral rape laws, as it highlights the need for a victim-centric approach.

3.5 Research Methodology

The methodology adopted in this study is doctrinal and comparative, supplemented by analytical and critical approaches. The doctrinal method involves a detailed examination of legal texts, including statutes, case laws, and legal principles. This method allows for a systematic analysis of the existing legal framework and its constitutional validity. It also facilitates the identification of gaps, inconsistencies, and areas requiring reform. The comparative method involves the study of legal frameworks in the United States and the United Kingdom. By comparing these jurisdictions with India, the study identifies best practices and alternative approaches to addressing sexual violence. This method provides valuable insights into the feasibility and effectiveness of gender-neutral laws.

The analytical approach is used to evaluate the effectiveness of existing laws in achieving their intended objectives. It involves a critical examination of the alignment between legal provisions and constitutional principles, as well as their impact on victims. The study also acknowledges certain limitations, including the absence of empirical data and the restricted scope of comparative analysis. However, these limitations do not detract from the overall objective of the research, which is to provide a comprehensive legal analysis of genderneutral rape laws.

3.6 Results and Discussion

The findings of this study reveal that the Indian legal framework governing rape is fundamentally exclusionary and inconsistent with constitutional principles. The gender-specific definition of rape creates a significant gap in legal protection, excluding male and transgender victims from the scope of the law. This exclusion not only violates the principle of equality but also undermines the dignity and autonomy of individuals. The analysis demonstrates that the existing legal framework is based on outdated assumptions that no longer reflect contemporary realities. While reforms have expanded the scope of sexual offences, they have not addressed the fundamental issue of gender neutrality. As a result, the law continues to operate within a binary framework that is inadequate for addressing diverse forms of sexual violence.

The comparative analysis of the United States and the United Kingdom highlights the advantages of genderneutral laws. These jurisdictions have adopted consent-based definitions that focus on the absence of voluntary agreement, thereby ensuring comprehensive protection for all victims. Their legal frameworks demonstrate that gender neutrality can be achieved without compromising the protection of women.

However, the study also recognizes the challenges associated with implementing gender-neutral laws in India. These include societal resistance, concerns about misuse, and the need to maintain protections for vulnerable groups. Addressing these challenges requires a balanced approach that combines legal reform with social and institutional change. Overall, the results indicate that the adoption of gender-neutral rape laws is both necessary and feasible. It requires a shift in legal and societal perspectives, as well as a commitment to upholding the principles of equality, dignity, and justice.

Chapter 4: Substantive Analysis of Gender-Neutral Rape Laws – India, United States, and United Kingdom

The legal treatment of rape across jurisdictions reflects the evolving understanding of sexual violence as not merely a gendered crime but as a violation of bodily autonomy and human dignity. A substantive analysis of rape laws in India, the United States, and the United Kingdom reveals significant differences in approach, particularly with respect to gender neutrality, definition of

consent, and recognition of diverse victims. While India continues to adhere to a gender-specific framework, both the United States and the United Kingdom have progressively moved towards more inclusive legal models, thereby offering important comparative insights.

In India, the offence of rape is defined under Section 375 of the Indian Penal Code, now substantially retained under the Bharatiya Nyaya Sanhita, 2023. The definition explicitly conceptualizes rape as an act committed by a man against a woman, thereby excluding male and transgender victims from its ambit. Although the Criminal Law (Amendment) Act, 2013 significantly expanded the scope of rape by including various forms of penetration and recognizing circumstances such as coercion, fraud, and incapacity, it did not alter the gender-specific nature of the provision. This indicates that while the legislature acknowledged the need to broaden the definition of sexual violence, it remained constrained by traditional assumptions regarding gender roles. The Indian legal framework thus creates a paradox. On the one hand, it recognizes the importance of consent and bodily autonomy; on the other hand, it restricts the application of these principles to female victims alone. This inconsistency becomes more pronounced when contrasted with the Protection of Children from Sexual Offences Act, 2012, which adopts a gender-neutral approach and provides protection to all children irrespective of gender. The existence of such a framework within Indian law itself demonstrates that gender neutrality is neither impractical nor unprecedented. However, the absence of a similar approach for adults results in a significant protection gap.

The situation has been further complicated by the decriminalization of consensual same-sex relations. Earlier, certain non-consensual acts involving male victims could be prosecuted under provisions dealing with “unnatural offences.” With the removal of these provisions in their earlier form, there is now a lack of clear legal recourse for male victims of rape. This legislative vacuum highlights the failure of the law to adapt to changing constitutional and social realities. In contrast, the United States has undergone a significant transformation in its approach to rape laws. Historically, American law also reflected gendered assumptions, but over time, reforms at both the federal and state levels have led to the adoption of gender-neutral definitions. Modern statutes in most states define rape and sexual assault in terms of non-consensual sexual acts, without restricting the gender of the victim or perpetrator. The focus has shifted from the identity of the parties to the nature of the act and the absence of consent. A notable feature of the American legal framework is the emphasis on affirmative consent in certain jurisdictions, which requires clear and voluntary agreement to sexual activity. This approach recognizes that consent must be active and ongoing, thereby providing stronger protection against coercion and exploitation. Additionally, the recognition of marital rape across all states reflects a commitment to the principle that consent cannot be presumed based on the existence of a marital relationship. This represents a significant departure from traditional notions that treated marriage as a blanket consent to sexual relations. The gender-neutral nature of rape laws in the United States has enabled the recognition of male and LGBTQ+ victims, thereby promoting inclusivity and equality. However, challenges remain in terms of implementation, particularly with respect to underreporting and societal stigma. Despite these challenges, the legal framework provides a more comprehensive basis for addressing sexual violence compared to the Indian system. The United Kingdom presents a slightly different model. Under the Sexual Offences Act, 2003, rape is defined as penile penetration of the vagina, anus, or mouth without consent. While this definition retains a gender-specific element in terms of the perpetrator, the law simultaneously provides for other offences, such as assault by penetration and sexual assault, which are genderneutral. This dual structure ensures that all victims, regardless of gender, are protected under the law.

A key feature of the UK framework is its detailed articulation of consent. The Act defines consent as agreement by choice with the freedom and capacity to make that choice. It also includes evidentiary presumptions relating to consent, such as situations involving coercion, deception, or incapacity. This approach reflects a nuanced understanding of the dynamics of sexual violence and places the burden on establishing the presence of genuine consent. The UK model thus achieves a balance between maintaining the traditional definition of rape and ensuring comprehensive protection through complementary provisions. It recognizes that while certain offences may be defined in specific terms, the overarching objective of the law is to protect all individuals from sexual violence. A comparative analysis of these three jurisdictions highlights several important observations. First, the centrality of consent as the defining element of rape is a common feature in both the United States and the United Kingdom, whereas in India, although consent is recognized, its application is limited by gender-specific definitions. Second, the recognition of diverse victims is more developed in the US and UK, reflecting a broader understanding of sexual violence. Third, the legal frameworks in these jurisdictions demonstrate that gender neutrality can coexist with strong protections against sexual offences. The Indian legal framework, by contrast, remains rooted in a binary understanding of gender that fails to reflect contemporary realities. The exclusion of male and transgender victims not only undermines the principle of equality but also perpetuates social stigma and discourages reporting. Furthermore, the absence of provisions addressing marital rape and non-consensual acts involving male victims indicates a need for comprehensive reform. At the same time, it is important to acknowledge that the adoption of gender-neutral laws in India must be approached with caution. Concerns regarding misuse of laws and the need to protect women, who continue to be disproportionately affected by sexual violence, must be carefully addressed. This requires a balanced approach that combines inclusivity with sensitivity to existing social inequalities.

In conclusion, the comparative analysis demonstrates that while India has made significant progress in reforming its rape laws, it continues to lag behind jurisdictions such as the United States and the United Kingdom in terms of gender neutrality and inclusivity. The adoption of a gender-neutral framework, centered on consent and bodily autonomy, is essential for ensuring that

the law provides equal protection to all individuals. Such reform would not only align Indian law with constitutional principles and international standards but also contribute to a more just and equitable criminal justice system.

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