

Hero's and she-roes! A critical analysis of gender neutral criminal laws in India

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Abstract

“How important it is for us to recognize and celebrate our heroes and she-roes!” is a quote by popular author Maya Angelou, which sums up the ideas dealt with in this paper. The Right to Equality, as enshrined in the Constitution, mandates that people, regardless of gender must have ‘equal protection of law’ and ‘equality before law’. Why then did the Supreme Court dismiss a petition, to make several sections of the criminal law gender neutral? This is one of the questions the paper would like to tackle, by providing a critique of the Supreme Court’s judgement in the case, this paper seeks to answer this question along with several others including:

- What is the validity of the claims of the Supreme Court in claiming that gender neutral laws are for the protection of women? (with specific reference to cases of misuse of these laws by women)
- Was the petition really ‘imaginative’ and if not, what are the societal ramifications of such a judgment? (with specific reference to the need of laws that apply to men in these situations to be legislated in the country – including rape and adultery)
- What could have been done in this situation by a more progressive judgment? (with reference to the Constitution, International Treaties that India is a party to and International Law of other countries in the same area of law)

The paper tries to analyse these questions jurisprudentially, after weighing in all the aforementioned opinions on gender neutral criminal laws while also suggesting several steps that could be taken by the legislators of our country, along with Supreme Court, that could move our society further along the path of legal gender neutrality, while still protecting the needs of the vulnerable sections of the society, regardless of which gender they belong to.

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Introduction to the paper

Are gender laws a part of the right to equality? This paper tries to answer this question with specific reference to the Indian scenario, by analysing several existing enactments, precedent and international laws on gender neutrality, along with this central question, the paper also tries to answer the following questions, namely:

- What is the validity of the claims of the Supreme Court in claiming that gender neutral laws are for the protection of women? (with specific reference to cases of misuse of these laws by women)
- Was the petition really ‘imaginative’ and if not, what are the societal ramifications of such a judgment? (with specific reference to the need of laws that apply to men in these situations to be legislated in the country – including rape and adultery)
- What could have been done in this situation by a more progressive judgment? (with reference to the Constitution, International Treaties that India is a party to and International Law of other countries in the same area of law)

By weighing in existing opinions and views on the same questions, the paper both critiques the existing legal situation and provides some measures that could be taken to rectify the lacunae in existing legislations.

Hypothesis

Recent times have seen women-centric laws being abused and lacunae in laws being exploited by both genders, hence the question of legislating gender-neutral laws arises, this paper deals with how to tackle the problem created by this situation and if these laws are appropriate for India or not.

Research methodology

The method of research followed is doctrinal research, with the analysis of various legislations and judicial pronouncements, along with research documents, newspaper articles and several other online sources to add credibility to the assertions made in the paper.

Introduction

What does the term equality mean as per the Constitution of India? When talked about in the terms of rights that the Constitution accrues to the people of India, Article 14² is often used as the end-all legal provision, in every case of violation of the rights of a citizen and its two-fold clause of ‘equal protection of law’³ and ‘equality before law’⁴ are called upon or cited in a court of law, to ensure that our rights are protected. This along with Right Against Discrimination⁵ and Right to Life⁶ are said to be the ‘Golden Triangle’ as per, *Maneka Gandhi v. Union of India*⁷ and are the most often used while claiming for a violation a citizen’s fundamental rights.

Internationally, several treaties provide for equality as an essential right to people including the Universal Declaration of Human Rights (UDHR)⁸, International Covenant on Civil and Political Rights (ICCPR)⁹, International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁰ which makes it obligatory for states to provide equality to their citizens, without any discrimination.

Furthermore, jurisprudentially, equality is one of the foundational principles of the rule of law¹¹ and thus wouldn’t it be safe to say that laws shouldn’t be discriminatory on the basis of gender?

Gender neutrality, is a movement that seeks to avoid negative discrimination on the basis of gender, with regard to policies, language etc. It doesn’t seek to deny the differences between men and women but rather about understanding these differences and the implications these differences have on the lives of both genders.¹² Gender neutral laws, therefore, are those which seek to grant equal sanction and opportunity to both genders, without negative discrimination.

² INDIA CONST. art. 14.

³*Id.* at 2.

⁴*Id.* at 3.

⁵ INDIA CONST. art. 15.

⁶ INDIA CONST. art. 21.

⁷*Maneka Gandhi v. Union of India*, 1978 S.C.R. (2) 621.

⁸Article 1, UDHR.

⁹Article 3, ICCPR.

¹⁰Article 3, ICESCR.

¹¹United Nations, *Equality and Non-Discrimination*, UN, (May 25, 2018),

<https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/>.

¹² Dr. Sailaja Vaskarla, *Gender-Neutral Policies and Practices at Workplace: An Indian Industry Perspective*, 4(12) IJHRRR 29, 29–30 (2016).

In lieu of this movement promoting the right to equality, a Public Interest Litigation (PIL) was filed by Supreme Court lawyer Rishi Malhotra, in effect to protect the rights of both genders by making several criminal laws gender neutral¹³ thus including:

- Assault or criminal force with intent to outrage her modesty¹⁴: sexual harassment¹⁵, assault or use of criminal force to woman with intent to disrobe¹⁶, voyeurism¹⁷,
- stalking¹⁸ and
- rape¹⁹

These were heard on the basis mentioned earlier, in violation of Article 14 and Article 15 of the Constitution, why then did the Supreme Court reject this petition, on the grounds of being ‘imaginative’?²⁰ With another similar petition²¹ that wanted to make the criminal adultery law, being taken up by the Supreme Court does the Supreme Court not believe in gender neutrality? Or are there other reasons for the rejection of this petitions? These are the questions the paper seeks to answer, along with several more, to finally arrive at the conclusion as to whether gender neutral criminal laws are indeed a part of right to equality, or whether they stand outside the purview of this particular legal facet.

This is done in the following ways, the opinions are weighed in against each other, one being whether laws should be made gender neutral and the other, which says they shouldn’t and supports the idea of the petition being ‘imaginative’²² in nature. After being weighed in against each other, they are both examined together from the perspective of providing solutions to the legal dilemma faced in the situation and thus to answer the question as to whether gender neutral laws are part of the right to equality.

Why they are a part of the right to equality

¹³Deya Bhattacharya, *SC dismisses plea to make sexual assault gender neutral: Move reflects court's reluctance to view rape cases as victim-centric*, NEWSYAHOO (May 25, 2018), <https://in.news.yahoo.com/sc-dismisses-plea-sexual-assault-122124111.html>.

¹⁴ Sec. 354 of The Indian Penal Code, 1860.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 15.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 17.

¹⁹ Sec. 375, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860

²⁰KrishnandasRajagopal, *Supreme Court dismisses plea to make a gender-neutral offence*, THEHINDU (May 25, 2018), <http://www.thehindu.com/news/national/supreme-court-dismisses-pil-asking-rape-to-be-made-a-gender-neutral-offence/article22631394.ece>.

²¹BhadraSinha, *Why is adultery an offence for men and not women, plea raises question in SC*, HINDUSTANTIMES(May 25, 2018), <https://www.hindustantimes.com/india-news/why-is-adultery-an-offence-for-men-and-not-women-plea-raises-question-in-sc/story-tjnqacVVRc5ZrQA3zFrPuO.html>.

²²*Supra note 19.*

Although there have been measures to combat this in recent times, India still remains a largely patriarchal society²³, although there are a multitude of women-centric laws in today's times²⁴ including The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Dowry Prohibition Act 1961, Indecent Representation of Women (Prevention) Act 1986, Protection of Women from Domestic Violence Act 2005 and so on. Thus, it is a common assumption of those who favour women-centric laws, to regard the effects such laws have on women as far greater than the effects that such laws might have on men.²⁵

A law where only women are viewed as victims extends patriarchy by reinforcing gender stereotypes of the man as an aggressive power-wielder and the woman as a hapless victim. Thus, this does nothing to address the problem itself. On the contrary, gender neutral laws render patriarchy irrelevant by providing equal access to legal remedy irrespective of one's gender, thereby eliminating discrimination at least in one realm.²⁶

The framers of the Constitution, believed that all citizens of India, should have justice (social, economic and political), equality of status and opportunity, equality before law²⁷ and thus any law which doesn't promote this, could be said to be in violation of Article 14 of the Constitution, which guarantees the right to equality.

This is applicable to criminal laws of the land, especially those which are women-centric and although it can be argued that the purpose of their enactment is the protection of women and thus, the basic argument made in the petition was: 'Crime has no gender and neither should our laws. Women commit crime for the same reasons that men do. The law does not and should not distinguish between criminals and every person who has committed an offence is liable to punishment under the Code', as said by Rishi Malhotra.

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²³AnkitaChakraborty, *Gender Justice Under Indian Constitution*, IJLDAI 15, 18–19.

²⁴National Commission for Women, *Laws Related to Women*, NCW (May 25, 2018), <http://ncw.nic.in/frmlawsrelatedtowomen.aspx>.

²⁵KanikaKochhar, *Gender equality in language too, please*, NATIONALINTEREST (MAY 25, 2018), <https://nationalinterest.in/gender-equality-in-language-too-please-426b38accbcd>.

²⁶*Id.* at 25.

²⁷*Preamble to the Constitution – A Declaration of the State of India to Secure Justice and Security to the People*, SHODHGANGA (May 25, 2018)

http://shodhganga.inflibnet.ac.in/bitstream/10603/172020/12/12_chapter_05.pdf.

²⁸*Supra note 22.*

When this becomes even more applicable is when one examines the loopholes that exist in the legal system of our country, with respect to these women-centric laws, coupled with the supposed ‘misuse’ of such laws by women of our country, to gain an upper hand over their significant others or for some other malicious intention.

Adultery

Indian adultery law gives a clean sheet to a married woman that sleeps with a man outside her marriage, while on the other hand, the man who she slept with gets prosecuted with imprisonment up to five years, this is absolutely absurd as the offence is consensual in nature and women should be given the same punishment as men.²⁹

Although conversely it is true that a woman can’t file a case under this provision and thus, treats the women’s chastity as the exclusive property of the husband. In cases which the woman who the husband cheats on his wife with happen to be a widow or an unmarried woman, there can be no case at all.³⁰

This clearly shows the need for a gender-neutral law in this case as it can be abused by both sexes, thus it was suggested that this proviso be made gender neutral, giving equal punishment to both sexes who engage in an extra-marital affair. The same has been suggested by a committee instituted to reform adultery law in India.³¹

Thus, it has been prayed by Joseph Shine, an NRI from Italy, in a petition that has now been referred to a constitutional bench of the Supreme Court, to make adultery laws gender neutral claiming it to be arbitrary, illegal and violative of citizen’s fundamental rights.³²

Intercourse with inducement of marriage³³ can be clubbed with this section, as it punishes any man who engages in sexual intercourse with a woman, on the belief that he would

²⁹PrateekGupta, *Explained: Adultery law and discrimination* INDIANEXPRESS (May 25, 2018), <http://indianexpress.com/article/india/explained-adultery-law-and-discrimination-5026613/>.

³⁰*Id.* at 29.

³¹K Deepalakshmi, *The Malimath Committee’s recommendations on reforms in the criminal justice system in 20 points* THEHINDU (May 25, 2018), <http://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece>.

³²PTI, *Plea against penal law on adultery referred to Constitution bench* ECONOMICTIMES (May 25, 2018), <https://economictimes.indiatimes.com/news/politics-and-nation/plea-against-penal-law-on-adultery-referred-to-constitution-bench/articleshow/62383315.cms>.

³³§ 493, Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

marry her after said intercourse, here again, only men are punished for committing such acts and therefore, there is scope of the enactment of a gender-neutral law.

Dowry

While this law might be seen as protective in nature against the evil practice that is dowry, but there have been reports of abuse by women, over the years³⁴, often in situations where the woman has a falling out with her in-laws, she asks her husband to choose between them and her, under the threat of filing a case of dowry harassment against the husband's family or the husband itself, it was reported in 2008³⁵, that 30% of all cases that came to an NGO were of this nature, moreover this offence is non-bailable and non-compoundable, thus the chance of being put behind bars is high, even if one didn't commit the offence.

Due to this, it was reported³⁶ in May, 2014 that there had been 64,000 male suicides in 2012, due to harassment faced by them due to false dowry charges being filed against them, thus this also fractured several families, separating parents from their children.

Thus, in July, 2014³⁷, the Supreme Court ruled that due to the low conviction rate in dowry harassment cases, that magistrates were now supposed to peruse a report filed by police officers against accused in dowry cases and only after satisfaction of Section 41 of the Criminal Procedure Code, can the magistrate order the detention of the accused, unlike earlier where the rate of charge sheeting was 93% but the rate of arrest was only 15%.³⁸

Domestic violence

Being one of the most harrowing patriarchal facets of society, even though the figures say that not even 50% of Indian women that have been subjugated to domestic violence have approached the police, even among these cases there have been instances of filing of false

³⁴*Dowry cases: panel for amending IPC section*, THEHINDU (May 25, 2018), <http://www.thehindu.com/2003/11/17/stories/2003111703400500.htm>.

³⁵TNN, *Pro-women laws being misused*, TIMESOFINDIA (May 25, 2018), <https://timesofindia.indiatimes.com/india/Pro-women-laws-being-misused/articleshow/3165918.cms>.

³⁶H.S Narasimha Kumar, *Activists highlight rise in suicides among married men*, THEHINDU (May 25, 2018), <http://www.thehindu.com/news/national/karnataka/activists-highlight-rise-in-suicides-among-married-men/article6056181.ece>.

³⁷DhananjayMahapatral, *No arrests under anti-dowry law without magistrate's nod: SC*, TIMESOFINDIA (May 25, 2018), <https://timesofindia.indiatimes.com/india/No-arrests-under-anti-dowry-law-without-magistrates-nod-SC/articleshow/37661519.cms>.

³⁸*Id.* at 37.

complaints³⁹, to the extent that the Supreme Court called the abuse by women of this provision ‘legal terrorism’ and diluted the protocols of arrests under the law, as it was putting ‘bedridden grandmothers and grandfathers of the husband in jail’. Due to the fact that such incidents often are closely linked to dowry harassment cases, in which parents of the husband face charges.⁴⁰

Rape

While incidents of rape and violence against women have increased since 2012, with some particularly shocking cases being the recent Kathua and Unnao rape cases along with the Nirbhaya rape case that happened in 2012, the recent petition to the Supreme Court to make criminal laws gender neutral included rape, it was argued that “Crimes like rape and murder do not see age, caste or even gender or sexual orientation. Rape is seen across the extremes of age, sex and geographical boundaries. Thus, it is only the development and application of a gender neutral law that will be effective in improving the reporting and registering of such crimes”⁴¹

It also says that “In a recent study it was found that out of 222 Indian men surveyed, 16.1% had been coerced into having sex. Despite rape of men not researched as widely as rape of female, there are several statistics to suggest that men are raped and the prevalence of men rape is wider than is generally presumed”⁴²

Thus, after turning 18 (as POSCO is gender-neutral⁴³), if one doesn’t have any legal protection from a heinous crime such as rape, this is against their fundamental human rights, regardless of gender, it is clearly arbitrary and discriminative. If the system cannot provide a person with legal recourse against the commission of the crime of rape against them, it is fundamentally flawed, regardless of which gender they belong to.

Stalking

³⁹NimishaJaiswal, *Indian court rules that men need protection from women making unsubstantiated domestic harassment claims*, PRI(May 25, 2018), <https://www.pri.org/stories/2017-08-15/indian-court-rules-men-need-protection-women-making-unsubstantiated-domestic>.

⁴⁰*Id.* at 39.

⁴¹*Supra note* 28.

⁴²*Id.* at 41.

⁴³*Govt amends POSCO Act to make it gender-neutral*, NEWSTODAYNET(May 25, 2018), <https://www.newstodaynet.com/index.php/2018/04/28/govt-amends-posco-act-to-make-it-gender-neutral/>.

This offence can also be clubbed along with adultery and intercourse with inducement of marriage, as it only punishes male offenders, is this to say that law cannot recognize a situation in which a female stalks a male, even though the converse is mostly the standard?

The law should provide some recourse for such situations, as this too, like the aforementioned laws suffer from serious loopholes, owing to the fact that they aren't gender neutral and by doing so, they fail to protect a part of the society, however marginal they might be.

LGBT community

As per *NALSA v. Union of India*⁴⁴, there is a legally recognized third gender, even though this third gender might be one of the most marginalized sections of society, reduced to begging at street signals⁴⁵, being denied employment, education and other basic necessities⁴⁶, all while being a part of a democratic society who's Constitution guarantees a right against discrimination on the grounds of sex.

Where this becomes even more discriminatory, is the fact that homosexuality is criminalized under the Indian Penal Code, therefore both consensual as well as non-consensual sex is punishable under this section, thus there is no differentiation between both the acts under the penal law of the country. This means that two consenting homosexual adults legally, can be punished for having sexual relations between them and at the same time, if a male were to brutally sodomize another male, legally, they'd both be liable for the same punishment, moreover it is categorized legally, as the same offence.

Thus for all these reasons this section too, was called for being violative of the fundamental rights of Indian citizens, in *Suresh Kumar Koushal and another v NAZ Foundation and Others*⁴⁷, it was prayed before the Supreme Court to strike this law down as it was constitutionally invalid, after the Delhi High Court passed a judgement⁴⁸ declaring the law unconstitutional, the Supreme Court held it to be constitutional and left the matter to the competent legislature to consider the desirability and legitimacy of deleting the Section from the statute book or altering the same to allow consensual sexual

⁴⁴NALSA v. Union of India,WP (Civil) No 604 of 2013.

⁴⁵*Id.* at 44.

⁴⁶*Id.* at 45.

⁴⁷Suresh Kumar Koushal and another v NAZ Foundation and Others,Civil Appeal No. 10972 OF 2013.

⁴⁸160 Delhi Law Times 277.

activity between two adults of the same sex in private, as it should be, due to rights guaranteed to us in the constitution.

Sociological effects

On men

Men are also victims of a patriarchal society⁴⁹, always confined to their assigned gender roles, asked to be the breadwinners for their families, mocked by women and other men alike for showing any sign of weakness or sensitivity, being unable to express themselves, studies⁵⁰ show that men and women are effected by crimes such as rape in a similar manner, with victims experiencing PTSD-like effects such as flashbacks, anxiety and have also shown to be more vulnerable, experiencing a loss of self-worth. This loss of self-worth can lead to drug and alcohol addiction, antisocial behaviour and also can cause them to have suicidal tendencies.

As elaborated earlier, there exist no legal mechanisms for men to gain redressal in cases of such crimes, especially those of sexual nature being committed against them, thus this exacerbates all such situations, as if there is no legal recourse, they can have no remedy for the wrong committed against them.

Instances of men, committing suicide, due to harassment by spouses has also been documented⁵¹ and in 2012 itself, stood at an alarming rate of 64,000 men, this harassment has been done over women-centric laws such as dowry harassment and domestic violence, it is also noted that in situations like these, men are often separated from their children due to rulings in such cases, this further ruins their lives and the lives of their children.

It is also seen that the police in several cases⁵², have had callous attitudes towards men in relation to sexual crimes committed against them, along with other men, in all these situations the men had no legal recourse and even though in all these situations men were stalked, raped and sexually harassed in consonance with the various provisions of the penal law, they still had no legal recourse.

Transgender

⁴⁹*Supra note 25.*

⁵⁰*Id.* at 49.

⁵¹*Supra note 36.*

⁵²Zara Khan, *Adam, what do you mean you were teased?*, THEHINDU (May 25, 2018), <http://www.thehindu.com/thread/reflections/men-too-may-be-sexually-harassed/article18351375.ece>.

As mentioned earlier, already being one of the most marginalized sections of society, transgender not being able to report sexual crimes due to sexual activity relating to them being criminalized, doesn't help their situation at all and there have been cases⁵³ of sexual abuse by policemen after arrest of transgender, this further marginalizes them and causes them to feel like outcasts in the society who have no place, as they cannot even approach appropriate legal authorities for redressal of their rights, for fear of discrimination and sometimes even torture.

Why it isn't a part of right to equality

The Right to Equality, while being centered around the legal aspect of equality, also takes into consideration social equality among citizens of the state and in this respect, women are far behind men, considered largely to be second-class citizens, homemakers and child-bearers.⁵⁴ While this gives a very dim view of the largely patriarchal society that exists even in modern India, women's rights groups have been struggling for the last seventy years of Independence for the redressal of crimes against women, enforcement of their rights and for women to acquire equal status in society.

These efforts are helped largely by several schemes enacted by the government in favour of women⁵⁵, women-centric laws enacted in the parliament⁵⁶ and positive discrimination laws for women in areas of employment, education and medicine etc.⁵⁷

Thus, if these laws, which are in consonance with the constitution, seek to uplift and protect the rights of a marginalized section of society, are diluted by judgements such as this judgement decided by the Supreme Court⁵⁸, which reduced the provisions for arrest in cases of dowry harassment and domestic violence cases, this further increases the plight of women who are actually victims in such cases, as they cannot gain quick redressal for violations of their rights and the violators of their rights are given even more chances to evade from the law, therefore women feel even more discriminated against and the legal system, again fails to redress the situation as it should, ideally.

⁵³SoutikBiswas, *The degradation of PinkiPramanik*, BBC(May 25, 2018), <http://www.bbc.com/news/world-asia-india-18704298>.

⁵⁴*Supra note 22.*

⁵⁵*Supra note 23.*

⁵⁶*Id.* at 55.

⁵⁷*Id.* at 56.

⁵⁸*Id.* at 57.

It was for this reason that the PIL to make criminal laws gender neutral was rejected by the Supreme Court as ‘imaginative’⁵⁹, the court ruled that, “These are affirmative provisions for the protection of women and in their favour”.⁶⁰ It is totally right to say that these provisions, while being unable to protect both genders, have been enacted by the legislature, specifically with the protection of women in mind.

Even though the abuse of such laws, has been deemed as ‘legal terrorism’ by the Supreme Court⁶¹, one cannot deny that the purpose of such laws is to protect women and thus, even if there are cases in which these claims have been frivolous, there are obviously more cases in which the claims have been true, as in 2012, the number of fake cases came up to only 6% of the total number of cases filed, in the case of dowry harassment.⁶²

All the aforementioned factors and statistics showing that violence against women has increased manifold since 2012⁶³, especially in the areas of sexual crimes against women⁶⁴, paint a vastly different picture of discrimination and marginalization, that has continued through the ages and now become ingrained into the mindset of the people⁶⁵, thus if these women-centric laws and policies were to be diluted in some cases, to accommodate claims of frivolous cases and in other cases be replaced by gender neutral laws, this would ruin the already dismal situation of women’s rights in India and all the various legislations, schemes by the government and policies for upliftment of women would all be rendered ineffective, certainly not serving the purpose of ‘equality’ between genders, that they are ideally supposed to.

Conclusion

There have been recommendations by several committees⁶⁶⁶⁷ assigned to suggest reforms to amend several laws which are women-centric, in favor of legislating gender-neutral laws, that recognize all communities, especially transgender.

⁵⁹Supra note 19.

⁶⁰Id. at 59.

⁶¹Supra note 39.

⁶²Id. at 61.

⁶³Prachi Salve, *Crimes against women up 34% in four years; most reports from UP, Maharashtra, West Bengal*, FIRSTPOST(May 25, 2018), <https://www.firstpost.com/india/crimes-against-women-up-34-in-four-years-most-reports-from-up-maharashtra-west-bengal-2991754.html>.

⁶⁴Id. at 63.

⁶⁵Supra note 53.

⁶⁶Supra note 30.

Hence, if we were to implement gender-neutral laws, perhaps we could look at international gender-neutral legislations by other countries, some of which are:

- Malta: A traditionally Catholic country, which legalized gay marriage in 2017 and also became the first nation to ban ‘gay-cures’, designed to repress, eliminate or change a person’s gender identity, they are the 13th country in the European Union to legalize gay marriage, they wish to lead the front in terms of LGBT issues and civil liberties, by such legislation.⁶⁸
- Iceland: Enacted a stringent equal pay law, that requires companies with 25 or more employees to obtain a certificate that they provide equal pay to both genders, which is provided by an auditing authority, this law focuses on responsibility of the companies to ensure equal pay, thus showing how legislation can be used to enforce gender equality to the rest of the world.⁶⁹
- Finland: The first country in the world to have women parliamentary representatives enacted a gender-neutral marriage act in 2017, by which same sex couples could adopt children, thus being one of the pioneering nations in terms of gender neutrality.⁷⁰
- Rwanda: Ranked 4th in the world in gender equality, behind Iceland, Norway and Finland, the country has laws on gender based violence, equal rights in ownership of property but like India, suffers from a patriarchal mindset, that creates a mismatch between the policies and actual implementation of the said policies, although they are undertaking measures to cause changes through awareness.⁷¹

Now, before the central question of the paper is answered, there is another question which all this debate poses, is India ready for gender neutral laws?

⁶⁷AartiDhar, *All sexual identities are entitled to protection: Verma report*, THEHINDU (May 25, 2018), <http://www.thehindu.com/news/national/all-sexual-identities-are-entitled-to-protection-verma-report/article4342101.ece>.

⁶⁸Benjamin Kentish, *Malta to legalise gay marriage and ban gendered words in legislation*, INDEPENDENT(May 25, 2018), <https://www.independent.co.uk/news/world/europe/malta-gay-marriage-same-sex-legalise-gendered-word-ban-legislation-law-a7822226.html>.

⁶⁹RuwanSubasinghe, *Taking Iceland’s Gender Pay Gap Law Global*, INEQUALITY (May 25, 2018), <https://inequality.org/research/iceland-gender-pay-gap-model/>.

⁷⁰*Finland is a gender equality pioneer*, STM (May 25, 2018), <http://stm.fi/en/finland-is-a-gender-equality-pioneer>.

⁷¹James Karuhanga, *Rwandans urged to embrace country's 'gender-neutral laws'*, NEW TIMES(May 25, 2018), <http://www.newtimes.co.rw/section/read/229566>.

Well, in my opinion, absolutely not, with the dismal state of women-centric laws and policies in the country⁷², coupled with several other factors including the patriarchal mindset of people, pathetic implementation of laws which are sometimes archaic in nature along with a severe issue of gender identity spanning all sexes in the country, with males being identified as protectors and breadwinners, women as child-bearers and homemakers and transgender not being allowed to have a defining identity at all, always being classified as outcasts.

Thus, implementation of gender neutral laws would (as elaborated previously in the why it doesn't include the right to equality), in effect, worsen the already bad state of affairs relating to women and transgender rights in the country, rendering all the positive discrimination policies and women-centric laws diluted to a great extent.

What then would be an amicable solution to problems herein?

For answers to this question, we can look back at the recommendations made by the Justice Verma committee report⁷³, on the topic of gender identity, for possible steps that Indian laws and policies must take to address the issue in an appropriate manner.

It talks about the possibility of sexual assault on men, homosexuals and transgender, thus recommends that legal provisions be cognizant of them.

Further mentions, how transgender should be entitled to an affirmation of gender autonomy, how the state shouldn't be labelling sexuality and how the right to sexual orientation is guaranteed by the fundamental principles of equality, how children should be given adequate non-prejudiced sources on sexuality and how the focus should be on changing the perception of sexuality in our society.

All these recommendations, can be achieved by a number of methods including:

Enacting gender specific legislation, that doesn't undermine the already existing machinery to protect women, by diluting laws relating to their protection, but rather seeks to redress the claims of another gender affected by the same violations of their rights. The stand of the judiciary and the government on how gender-neutral provisions are meant to protect the rights of women, is absolutely absurd as even though they do, by doing so the

⁷²*Supra note 64.*

⁷³*Supra note 66.*

government has totally overlooked other marginalized sections of society, including transgender and homosexuals.

These gender specific legislations, must not just be enacted by parliament acting on its own, but should be framed with the help of NGO's and policy makers in the field of human rights, so that it can be carefully drafted, thus not allowing scope of misuse of such laws, as we have seen in the cases of women-centric laws in the country.

The government should make it a priority to decriminalize homosexuality and should, in aid of transgender and homosexuals enact welfare policies in their favour, especially in the case of transgender. These policies should include employment opportunities, loans, free education for transgender children and should be done in tandem with NGO's. The fact that we legally recognized the third gender is not enough⁷⁴, we must bring them within the fold of society and enable them to live fruitful and successful lives, without any discrimination, even though in the Indian situation, this seems like a distant dream.

The government in tandem with NGO's, should spread awareness about the following social issues:

The gender identity crisis in India that has existed for centuries, that confines males, females and transgender to societally defined gender roles with an effect to change the perception of gender identity that people have within the nation, so that all people might truly have the right to self-determination.

Homosexuality, how it shouldn't be seen as a crime and how homosexuals can be fully functioning members of society, free from discrimination, the risks of HIV/AIDS for homosexuals should also be elaborated upon, therefore spreading awareness that is key to both homosexuals and heterosexuals making decisions in their private life.

Transgenders, should be another focus of these awareness programs, how they've been and continue to be one of the most marginalized sections of society and how they should be given opportunities and chances to lead normal lives, free from beggary and harassment.

Along with these, the government should institute sensitization programs among law enforcement officers of the country, especially in cases relating to sexual crimes against

⁷⁴*Supra note 45.*

men, as they have shown in the past to exhibit callous attitudes to such crimes and thus aren't able to carry out the purpose they serve in the legal system.

Now, that I have tried to answer the question as to whether India is ready for gender neutral laws, there remains only the question, are gender neutral criminal laws part of the right to equality?

Yes, jurisprudentially, equality is one of the foundational principles of the rule of law and this applies to gender-related laws as well and hence, to ensure equality in a society, gender neutral criminal laws can play an important part in achieving said equality.

Although in a society, where the scales have been tipped for several years in favour of one gender⁷⁵, where the application of principles of gender neutrality have only further ruined the state of affairs for women, who are already marginalized and discriminated against. In such a society, these much more forward thinking and progressive laws and principles have no place, as they further exacerbate a situation of patriarchy. Thus, in the Indian situation, gender neutral criminal laws cannot be considered a part of the right to equality.

The title of the paper is taken from a popular quote by author Maya Angelou, 'How important it is for us to recognize and celebrate our heroes and she-roes!', this fits perfectly into the scheme of the paper, as to truly make strides towards the ideal principle of gender neutral criminal laws as a facet of the right to equality, India must first address issues relating to sexual orientation, marginalization based on gender, gender identity and only after doing this, they may one day be able to enact gender neutral legislation that will function as a facet of the right to equality.

⁷⁵*Supra note 71.*