

# **The need for gender neutral criminal laws in India**

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## **Abstract**

The term gender – neutral means that is independent of gender i.e. equally applicable to both male and female. The men and women along the ages have been legally differentiated on various grounds. It has been hard for the criminal laws in India to have a gender – neutral approach. The laws in India relating to rape, under Section 375 and 376 of the Indian Penal Code suggest only a man can be convicted of rape. The victim is always a woman. Even laws concerning issues such as sexual harassment, stalking and voyeurism are also gender specific in India. Furthermore, Section 497 of the Indian Penal Code states that only the men are accountable for adultery. If a married woman is found to have an affair/ or caught in such act of adultery, she is not held guilty of such offences. Even the Justice Verma Committee had recommended gender neutral rape and sexual assault laws. However, such recommendations were kept in cold storage by the government, due to pressure by activists. The Criminal Amendment Act 2013 was passed without the much needed gender-neutral reforms. In this paper, we try to discuss how gender neutral laws are important, how such gender neutral laws can change the biasness towards one sex. If we make considerable corrections in the gender discriminating laws and implement them, only then can the concept of gender neutrality be realized. Article 14 of the Indian constitution states equality before law i.e. each and every citizen of this country is equal and is subject to no discrimination on any grounds of colours, caste, creed, sex, and so on. Though our constitution is very clear on no discrimination based on gender but there are certain laws where their discrimination. To achieve the goals stated in the Indian Constitution, the time is ripe for proper implementation of gender neutral laws in India. Needless to conclude, Justice is a must for all and to achieve justice for each and every one of the society, the laws must be absolutely gender neutral.

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## **Introduction**

- The word neutral means to be impartial or unbiased. This word when combined with the word gender means that each and every citizen be it male, female or transgender is subject to equal and fair treatment. No one is superior or inferior and in the eyes of the law. Gender neutrality means if a person of any gender commits an act of crime, then the person is accountable to be punished as established in the law without considering the gender of the involved person. But the real question is does India follow the concept of gender neutral criminal laws?
- India has a population of approximately 1.3 billion people living in the country. People of all sexes i.e. male, female and transgender live in the country. Still the concept of gender neutral criminal laws in India is hard to find. There are many laws that favour female when compared with male and some laws which favour male over female. Whereas the rights of transgender are overlooked or silent at times.
- We need to change our mentality from gender equality to gender neutrality. There is no use of equality if the laws in the country are not neutral and favour one sex. No one is inferior or superior and each and everyone shall be subject to equal treatment. It is unfair that one sex is favoured by law and the other sex if guilty is not given equal punishment. The government, the people, the nongovernmental organizations need to work hand in hand to bring about the desired change to give effect to gender neutral criminal laws in India.
- Gender cannot be taken as a sole criterion to suggest that male is the offender and female is the victim. For example, rape laws in India. The time and need of the hour is to have change in belief of Indian laws that even a female can commit rape. Even a male or transgender must be accountable for domestic violence.
- To change the present scenario, the government at most needs to understand the condition required to gender neutral laws being established in India. The belief and the idea of being impartial and unbiased in every decision the government takes must be reviewed. The concept of gender neutral criminal laws in India shall only take place because of the collective effort and pressure of the media, intellectuals, academia, common people, N.G.O and other institutions which keep a check on the society.

## **The need for gender neutral laws in India**

- Let's take an example of cruelty i.e. section 498A of the Indian Penal Code states husband or any relative of husband if commits an act of cruelty on wife is subject to imprisonment up to a term of three years as well as fine. Surprisingly there is no law in India which states any punishment if women commit an act of cruelty on men though such a situation does occur and is possible. Due to absence of gender neutral laws on cruelty there has been misuse of such law. Section 498A is a non bailable offence which further makes it difficult for the innocent to avoid punishment.
- Similar laws need to be framed to protect the husband and his family member from such acts by the wife. There have been various cases where this section has been misused. To avoid such situations gender neutral laws, need to be taken into consideration.
- The term rape in India has been generalised as to only male can commit such act. But the truth of the fact is even men, transgender have faced such brutal crime. Even if the man files a complaint accounting to rape committed by women, the woman would get away from it easily as the I.P.C does not have provisions to deal with such acts.
- Section 354 D –refers to stalking and states any man who follows a woman even after clear indication of disinterest or by the use of internet, or any communication accounts to stalking. The section indicates only men can commit such offences but women cannot commit an offence of stalking.
- Similarly, section 354C – Voyeurism, 354A – sexual harassment, section 354 –assault or criminal force to outrage modesty of women speaks for such crimes that can be committed by men.
- Article 15 of the Indian Constitution states that no one can be discriminated on the basis of colour, caste, creed, sex etc. But here people are being discriminated on the grounds of gender. Why are there no Gender neutral laws? Why do the laws in India make a distinction between male, females and transgender when it clearly states no one should be discriminated yet it discriminates and causes differentiation between people of our country?
- Further there are many laws such as adultery, Section 497 of Indian Penal Code and many more laws which need to be looked again and are to be amended for acquiring gender neutral criminal laws in India.
- Crime does not have any gender and the need is for gender equality. This can only be achieved by making gender neutral criminal laws. The government needs to look into

the old laws and consider changing them as everyone should be equal in the eyes of law as stated by our supreme constitution.

### **The role of media in achieving gender neutral criminal laws**

- Media is an organization which can provide the information to highlight the current scenario of the society as a whole. Whatever news we hear we tend to believe it and we also make sure we tell people and discuss/ debate on such issues.
- Media is such a powerful tool that can help influence our thinking on various gender related laws. Media makes us see the reality. It acts as a guardian to protect the citizens of the country.
- Media works hand in hand with the government. Based on what media broadcasts to the public, the governments act and plans its moves. Media needs proper backing from the government, needs people to participate to deliver its best in order to highlight the problems and give effective solutions for the same. If media can highlight what are the problems faced by men, transgender as well as women then the government can act precisely amend such laws which favour one sex. The need of the hour is for change and media is the heart of the society which can help in raising the voice of the people bringing the much needed gender neutral criminal laws.
- There have been various incidences as well as case laws in India with regard to criminal violence such as rape, domestic violence etc against men as well as transgender. Media needs to highlight such cases as to make the people, government and the court aware of present scenario and the need to implement equal laws for everyone.

### **Some suggestions:**

- Education –is one of the most important aspects of human life. If an individual is not educated he will never be aware of the present laws, whether they are gender neutral or gender biased. The need of the hour is to make the citizens of our country aware and such process of education can make an individual raise his voice if he finds the laws to be gender biased. Presently the literacy in India is not that great and that many people are unaware of the laws in India. I believe if we learn something at grass root level it will always stay with us. The government, the people need to ensure that people of India are informed, aware and educated.

- Non – Governmental Organization –N.G. O can play a very important role to get the required gender neutral criminal laws. These organizations can go to the affected person who has been affected by such biased laws and such can be highlighted in media. New laws or amendment of the existing criminal laws – Either the existing laws in the Indian Penal Code can be amended as it was established in 1860 and since then a lot has changed and with the change in time the laws need to be evolved. The other option is to make new gender neutral laws. Change in thought process – only when we change the way we think and look at crime has no gender, compare ourselves to other developed as well as developing countries who have changed their thinking process only then can we achieve gender neutral criminal laws.

### **Role of united nations in gender equality**

“The goal of promoting gender equality (or equality between women and men) has been on the agenda of the international community since the founding of the United Nations. It is well established in the UN Charter. World leaders assembled at the 2005 World Summit at the UN here in New York affirmed that “Progress for women is progress for all”.

The UN recognizes Gender Inequality as one of the predominant problems in today’s world and in 2010. The UN created the UN Women division to address this issue of gender inequality. UN Women is dedicated for empowerment of women and Gender Equality. All around the world, women are under-represented and denied access to basic facilities like education. In matters of politics and finance also, they are not allowed to raise their voice nor have the chance to stand.

Before the creation of UN women by UN General Assembly, the work of UN on Gender Equality and Women Empowerment was divided into four parts which UN women takes care of now which are:

1. Division for the Advancement of Women (DAW)
2. International Research and Training Institute for the Advancement of Women (INSTRAW)
3. Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI)
4. United Nations Development Fund for Women (UNIFEM)

UN Women was initiated for helping intergovernmental bodies on the status of women in policy formulation and to help other member states implement these standards and lend them support.

### **Convention on elimination of all forms of discrimination against women (CEDAW)**

CEDAW is an international treaty adopted by the UN General Assembly in 1979 and deals with all forms of discrimination against women and ways to eliminate these discriminations. It is also described as international bill of rights for women as it describes the discrimination against women and ways to eliminate it in detail.

Despite these laws for women, the vision for gender equality has somehow failed due to gaps in implementation of these policies and laws at regional and national level. The lack of implementation may be because of many reasons such as miscommunication, lack of resources.”<sup>3</sup>

### **Gender neutrality an important issue for men as well**

“The gender neutrality is not just a topic of concern for women; it is also an important issue for men to address. Men face gender inequality too. Men have always been led to believe that they must pick up masculine jobs like engineering, law that suits their personality and character and same goes for women who pick up jobs like dancer, teacher. The gender inequality does not end here, more extreme examples of discrimination includes women not allowed to drive in some countries, not allowed to wear what they want.

The roots of Gender inequality were rooted a long time ago, but the preconceived notions of society have paved way to the evils of Gender inequality. The development of the world is possible only through the inter-existential cooperation of both Men and Women.

Men and Women complete each other and without any one of them, the other would not be able to succeed. Thus, the participation of both men and women is required. Women have been known for their feminine and sensitive nature while men are led to believe to follow masculinity and aggression. Sometimes, the aggressive decisions require a more sensitive approach while the same may be said for a sensitive decision.

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<sup>3</sup>UN Women: *The United Nations Entity for Gender Equality and the Empowerment of Women*, UN (May 18, 2018 11:31 AM) <https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-the-empowerment-of-women/>.

Gender Equality is often referred as a “Woman’s issue” even though it is an issue for everyone. Recent studies have shown that places with more gender equality had higher levels of happiness, higher productivity, less suicides.”<sup>4</sup>

### **Transgender as an inferior gender**

“Another group which doesn’t get much recognition are the “Transgender”. According to the studies, transgender are least privileged among all the sections of society i.e. Men, Women and Transgender. They are often stared, and are refused opportunities to work in most of the places as they are considered an inferior sex and people would feel uncomfortable sharing the workplace with a Transgender.

Transgender are those groups who differ from the average look of what men and women might look or supposed to look and this term came from the community of gender-different people. Transgender term is generally used to describe people who have different sexual orientation. In India there are many socio – cultural groups of transgender. They include hijras/ kinnars, shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, and so on. There may also be other individual transgender people who do not belong to the above groups.

### **Constitutional rights of transgender people**

Preamble to the Constitution mandates Justice - social, economic, and political equality of status.

Under Article 14, the first right that they deserve is the right to equality.

Article 15 focuses on the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Article 21 gives right to privacy and personal dignity to all citizens.

Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labour. Any contravention of these provisions is a punishable offence in accordance with law.

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<sup>4</sup>*The role of men and boys in promoting gender equality*, UN (May 17, 2018, 12:37 AM), [http://www.un.org/womenwatch/daw/news/speech2007/CH\\_stmts/2007%20Harvard%20Club%20Men%20May%202007.pdf](http://www.un.org/womenwatch/daw/news/speech2007/CH_stmts/2007%20Harvard%20Club%20Men%20May%202007.pdf).

## **The supreme court's verdict on the rights of transgender**

This judgement provides protection to those people who want to identify with the third gender as well as people who want to change from one identity to another, such as from male to female or vice versa. The Court has directed the Central and State Governments to grant legal recognition of gender identity.

### **Judgment:**

“The Hon’ble Supreme Court held that Fundamental Rights are available to everyone and the court ruled that Transgender have the right to be recognized as third gender in matters necessary or areas concerned. The court further held that hospitals and other sanitation/health care facilities should provide separate medical care to these people along with implementation of various welfare schemes and treat the community as a backward class. People should also be aware about this recognition of transgender as third gender.”<sup>5</sup>

### **Conclusion**

Gender Inequality is an important issue of mankind. The society cannot develop and prosper with evils like gender inequality. It is believed that every person is equal and yet, these slight differences arising from the preconceived notions of the society are detrimental to the society. Gender Inequality is not just a woman’s issue anymore but an issue for the men and transgender as well. To achieve gender neutral criminal laws in India, we must try to bring a change by re-visiting various laws which favour one sex. We are a country which guarantees equal rights to everyone and in the real spirit have gender neutral criminal laws. We must act now so the change can take place and ultimately benefit the coming future generations.

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<sup>5</sup>Manoj K. Jha, *Transgender rights in India*, (May 18, 2018 10:51 PM), <http://iasscore.in/national-issues/transgender-rights-in-india>.