

## Neutralizing Gender: A Comparative Analysis of Sexual Offense Laws in India and the UK

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### Abstract

In India the laws for sexual offences are gender specific for both victim and the perpetrator. The Britishers enacted laws on sexual offences for India in 1860, which remain largely unchanged in India to this day. In contrast, the UK has since modernized its laws, introducing the Sexual Offences Act 2003, where the victim and perpetrator both are gender neutral. It's striking that while the Britishers have moved forward over the years, India's legal framework in this arena remains rooted in the past. Despite the growing demand worldwide for gender neutral laws, India kept the laws relating to sexual offences as gender specific even in its newly implemented criminal law i.e., Bhartiya Nyaya Sanhita 2023. The current definition of rape reinforces traditional gender roles and stereotypes, implying that only men can commit rape and only women can be the victims. This narrow definition ignores the experiences of male victims and the possibility of female perpetrators, perpetuating harmful gender biases and limiting the scope of justice and support for all survivors. On the other hand, Sexual Offences Act 2003, applicable in England and Wales, broadly defines the sexual offences in a gender neutral manner. The paper critically analyzes the legal framework of laws relating to sexual offences in India and in the United Kingdom and discusses the need for reforming the laws for sexual offences in India.

**Keywords:** Gender Neutrality, Patriarchy, Sexual Offences, Stigma

### Introduction

In India, a significant criminal legal transformation was introduced with the repeal of Indian Penal Code 1860 and the implementation of newly drafted Bhartiya Nyaya Sanhita 2023. Although the intention of repealing the old law was to decolonise the criminal laws from the British era and to provide access to justice and fairness to all the sectors of the society<sup>1</sup> but it does not seem to achieve its objective. Under the Indian Penal Code, the laws relating to sexual offences were gender specific which means that the perpetrator of the offence was always a man and the victim was always the woman. Over the years there has been a demand to make these laws for sexual offences as gender neutral in Indian Penal Code. In the year of 2000, Law Commission of India in its 172nd Report on "Review of rape Laws" emphasised on the sexual abuse of young boys and further recommended the gender neutrality of rape laws in India. But unfortunately, the recommendation to make the laws gender neutral was not accepted by the legislature.<sup>2</sup> Again in the year of 2012, in the Criminal Law Amendment Bill 2012 an attempt was made to widen the definition of rape by introducing the term sexual assault instead of rape. But after the Nirbhaya Rape Case, the feminist

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<sup>1</sup> Mrinal Satish, Preeti Pratishruti Dash and Anushka Pandey, "Bharatiya Nyay Sanhita: Decolonising or Reinforcing Colonial Ideas?" The Wire, January 30, 2024

<sup>2</sup> Law Commission of India, "172nd Report on Review of Rape Laws" (2000)

groups were against the neutralization of definition of rape as they feared that it will weaken the rights of woman and eventually this suggestion of gender neutrality could not be implemented again.<sup>3</sup> Another suggestion was made in the year 2019, when The Criminal Law Amendment Bill 2019 came and it was again recommended that the definition of rape should be gender neutral and the words “man” and “woman” should be replaced as “person”.<sup>4</sup> But again these recommendations were not accepted by the legislature. After multiple failed attempts finally in the year 2023, when the government announced the Bharatiya Nyaya Sanhita Bill, a new criminal law, a glimpse of hope emerged that all the offences of sexual nature will be made more inclusive but the bill did not bring the desired reforms. This suggests that Indian laws only recognise woman as a victim of sexual offences like rape, stalking, voyeurism and sexual harassment etc. which depicts the misogynistic attitude that the offence of rape is only the act of sexual intercourse driven by the sexual desire of the perpetrator.<sup>5</sup> But over the period of time, alternative approaches have rendered this concept obsolete. Nowadays discussions are conducted that rape is not only about the sexual act but a method to show dominance, power and superiority over the other caste, sex or religion.<sup>6</sup> If it is so, then why should we define the offences of sexual nature only on the basis of sex. The author raises the concern that in the Bharatiya Nyaya Sanhita why gender is the only criteria to decide the perpetrator and the victim of the sexual offence.

### **Bharatiya Nyaya Sanhita 2023: Legal Framework For Sexual Offences In India**

Section 63 of Bharatiya Nyaya Sanhita 2023 defines rape. It states man as a perpetrator and woman as a victim of the offence.<sup>7</sup> Section 64 further provides for the punishment for rape. It provides rigorous punishment for the aggravated rape case where a person is in the position to dominate the other.<sup>8</sup> With only man as a perpetrator, this provision also suggests that only a man has a dominant position over the woman and therefore only he can commit rape and a victim will always be a woman and therefore the law considers them as weak. This is a folly as the dominant position has no relation with the gender rather it is connected with power. The language used in other offences of sexual nature like stalking,<sup>9</sup> sexual harassment etc. are no different than rape. Here also victims are women and perpetrators are men. Nowadays in the digital era where social media plays a significant role in everyone's life, this assumption seems a little outdated and unfair that only a woman can be a victim. Even men are being stalked and mocked on social media either by women or other men. But there are absolutely no laws in India where a male victim can report for any sexual offence committed against him. In the case of Navtej Singh Johar v. Union of India,<sup>10</sup> The Supreme Court decriminalised same sex relations and stated that even if the LGBT community is miniscule that does not deprive them from the right to privacy granted under Article 21. On the

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<sup>3</sup> [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2012/Criminal\\_Law\\_\(A\)\\_bill,\\_2012.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2012/Criminal_Law_(A)_bill,_2012.pdf) (Last visited on April 15, 2025)

<sup>4</sup> <https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/1427LS%20As%20Int....pdf?source=legislation> (Last visited on April 13, 2025)

<sup>5</sup> Narrain, A. (2013). Violation of Bodily Integrity. Economic and Political Weekly, 48, (No. 11). Retrieved from <http://www.epw.in/commentary/violation-bodily-integrity.html> on January 5, 2014

<sup>6</sup> Ibid

<sup>7</sup> Section 63, The Bharatiya Nyaya Sanhita 2023

<sup>8</sup> Section 64, The Bharatiya Nyaya Sanhita 2023

<sup>9</sup> Section 78, the Bharatiya Nyaya Sanhita 2023

<sup>10</sup> AIR 2018 SC 4321

similar grounds, even if the male victims of sexual offences are miniscule but still they have the equal right of protection. Due to lack of laws and patriarchal thinking, there is no reporting of sexual violence against men and these male victims are forced to live in agony. Justice Mustaque (High Court of Kerala) in a case remarked orally that “Section 376 is not a gender-neutral provision. If a woman tricks a man under false promise of marriage, she can’t be prosecuted. But a man can be prosecuted for the same offence. What kind of law is this? It should be gender-neutral.”<sup>11</sup> This is not a single incident. Many times PIL has been filed in the Supreme Court for making the laws relating to rape, stalking and sexual harassment as gender neutral but Court has refused to entertain the plea on the ground that it is the responsibility of the legislature to remove any lacuna in the law.<sup>12</sup> It is clear that there is a demand in the country for the gender neutral rape laws by the people and legislature needs to take steps to address it.

### **Sexual Offences Act 2003: Key Provisions And Implications**

Sexual Offences Act 2003 provides a legal framework to prosecute for sexual offences in the United Kingdom. The Act provides the definition of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent. In England and Wales, rape is defined as “A person (A) commits an offence if– (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents.”<sup>13</sup> The definition of rape is gender neutral for the victim but it remains gender specific for the perpetrator as it mandates the penile penetration. Other types of penetration by a person has been made a different offence and is not categorised as rape rather it is termed as assault by penetration. If a person penetrates any body part or anything else into vagina or anus of any person without consent then he will be liable for assault by penetration<sup>14</sup> This section is completely gender neutral for the victim as well as the perpetrator. Sexual Offences Act 2003 further defines sexual assault which is also a gender neutral provision.<sup>15</sup> Section 4 of the Act further provides the punishment for causing a person to engage in sexual activity without consent and it is also written in gender neutral language.<sup>16</sup>

In all the definitions of all the offences, gender neutral terminology is used. Here, the term used for the victim and perpetrator is “person” rather than man or woman.<sup>17</sup>

The Sexual Offences Act 2003 has indeed made significant progress in introducing gender neutrality in various sexual offences. However, a critical examination of the Act reveals a notable exception. Despite the strides towards gender neutrality, the definition of rape under the Act retains a gender-specific perpetrator, namely a man. This inconsistency has been subject to criticism, as it deviates from the principle of gender neutrality that the Act otherwise seeks to uphold. In

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<sup>11</sup> <https://thewire.in/law/kerala-high-court-rape-offence-gender-neutral-promise-to-marry>

<sup>12</sup> <https://www.livewlaw.in/top-stories/supreme-court-refuses-to-entertain-plea-to-criminalise-sexual-offences-against-men-trans-persons-animals-in-bns-272371>

<sup>13</sup> Section 1, Sexual Offences Act 2003. Retrieved from <https://www.legislation.gov.uk/ukpga/2003/42/section/1>

<sup>14</sup> Section 2, Sexual Offences Act 2003. Retrieved from <https://www.legislation.gov.uk/ukpga/2003/42/section/2>

<sup>15</sup> Section 3, Sexual Offences Act 2003. Retrieved from <https://www.legislation.gov.uk/ukpga/2003/42/section/3>

<sup>16</sup> Section 4, Sexual Offences Act, 2003. Retrieved from <https://www.legislation.gov.uk/ukpga/2003/42/section/4>

<sup>17</sup> <https://www.legislation.gov.uk/ukpga/2003/42/section/2>

essence, this law is an inclusive law where rights of men, women, LGBT community are protected. Attempts have been made to provide equal protection to all the citizens before law.

### **The Imperative Of Gender Neutrality**

According to Cambridge Dictionary, Gender neutrality means not relating specially to male or female.<sup>18</sup> It suggests that equal treatment and equal opportunities must be given to all individuals irrespective of their gender identities. Further the World Health Organization (WHO) defines sexual violence as any non-consensual sexual act, behavior, or advance, including unwanted comments, trafficking, or exploitation, directed at a person's sexuality. This can occur in any setting, such as home or work, and can be committed by anyone, regardless of their relationship to the victim, using coercion, threats, or physical force. The definition emphasizes that sexual violence can affect anyone and can be perpetrated by anyone.<sup>19</sup> It suggests the idea of making equal laws for all the people and no diversion should be made on the ground of gender. Gender neutrality is crucial in India also as it aims to build a society where everyone has equal opportunities, free from gender-based prejudices.<sup>20</sup>

The Bhartiya Nyaya Sanhita defines gender as “The pronoun "he" and its derivatives are used of any person, whether male, female or transgender”.<sup>21</sup> Article 14 of The Indian Constitution guarantees equality before law and equal protection of laws.<sup>22</sup> It is further provided by the Constitution that no discrimination should be done on the basis of religion, race, caste, sex, place of birth.<sup>23</sup> The constitutional provisions advocate equal rights for all of its citizens. For the upliftment of the women, special laws were made for them to provide protection against sexual offences. The aim of these special legislations were not to deprive any part of the society from the sexual violence but to bring all the sectors on the same footing. In the year 2000, the Law Commission strongly recommended the applicability of gender neutral laws for sexual offences and now even after 25 years we have not made such changes.<sup>24</sup>

### **Need For Gender Neutral Laws**

There is a growing recognition of male victimization of sexual offences worldwide and studies are being conducted to collect the data. As per the Home Office crime statistics for England and Wales, of victims aged 16 and older there were total of 9901 rapes during the 2010–2011 financial year, 9509 of whom were female (96%) and 392 of whom were male (4%).<sup>25</sup> The Crime Survey for England and Wales (CSEW) estimated that 618,000 women and 155,000 men aged 16 to 74 years

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<sup>18</sup> <https://dictionary.cambridge.org/dictionary/english/gender-neutral>

<sup>19</sup> Ministry of Health and Family Affairs, Government of India, Guidelines and Protocols on Medico-Legal Care for survivors/victims of sexual violence, 2014. Retrieved from <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>

<sup>20</sup> Baxi, Upendra (1987): 'Towards the Liberation of Women's Studies', ICSSR Newsletter, Volume XV111(3), pp 6-12

<sup>21</sup> Section 2(10), The Bharatiya Nyaya Sanhita 2023

<sup>22</sup> Article 14, The Constitution of India 1950

<sup>23</sup> Article 15, The Constitution of India 1950

<sup>24</sup> 172nd Law Commission Report (2000). Retrieved from [https://lawcommissionofindia.nic.in/report\\_fifteenth/](https://lawcommissionofindia.nic.in/report_fifteenth/)

<sup>25</sup> John C Thomas and Jonathan Kopel; Male Victims of Sexual Assault: A Review of Literature (2023) <https://pmc.ncbi.nlm.nih.gov/articles/PMC10135558/>

experienced sexual assault (including attempts) in March 2020. It amounts to a prevalence rate of 3 in 100 women and 1 in 100 men approximately (Office for National Statistics, 2020). Although the rate of sexual offences against men are substantially lower than women, still they are substantial.<sup>26</sup> As a result, many countries like England, Wales, United States, Canada etc. have adopted a gender neutral approach in their laws relating to sexual offences.<sup>27</sup>

A recent study by the Kailash Satyarthi Children's Foundation reveals a concerning trend of increasing male child sexual abuse cases in India. According to the study, there was a 25% rise in male child victims from 2017 to 2018, and a further 17% increase from 2018 to 2019. Shockingly, approximately 25% of males in India have experienced childhood sexual abuse, which translates to around 5.8 million male children being sexually molested annually. The vast majority of these cases go unreported due to the victim's feelings of humiliation, embarrassment, and shame stemming from social stigma. This highlights the urgent need for increased awareness, support, and a safe reporting mechanism to address the underreporting of male child sexual abuse.<sup>28</sup>

A recent study by the Centre for Civil Society in Delhi found that about 18% of Indian adult men surveyed reported being forced or coerced into sex. Despite limited research on male rape, available data suggests that men are victims of sexual assault more often than assumed. The stigma surrounding male sexual abuse prevents men from reporting incidents, fearing ridicule and shame. If assaulted by a female, men are often labeled as weak, and if assaulted by another male, their masculinity is questioned. This perpetuates the underreporting and invisibility of male sexual abuse.<sup>29</sup>

Information Technology Act 2000 is a gender neutral law. It uses the term “whoever” or “Person” for defining cyber crimes.<sup>30</sup> It's intriguing to note that while stalking is classified as a women-specific offense under the Bharatiya Nyaya Sanhita 2023, cyber stalking is addressed as a gender-neutral offense under the IT Act. This dichotomy raises questions about consistency in legal approaches towards stalking offenses, highlighting the need for a more nuanced and inclusive framework. Further Article 14 of the Indian Constitution talks about the right to equality.<sup>31</sup> It guarantees equality to all its citizens in all respect. Article 15 guarantees no discrimination on grounds of sex.<sup>32</sup> Therefore, even male victims get equal rights of protection from sexual offences even though the rate of male victims is less than the female victim.

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<sup>26</sup> Darren Langdrige, Paul Flowers and Dan Carney; Male Survivors' Experience of Sexual Assault and Support: A Scoping Review; *Aggression and Violent Behaviour*, Volume 70 (May-June 2023)

<https://www.sciencedirect.com/science/article/pii/S1359178923000253?via%3Dihub>

<sup>27</sup> Rumney, P. (2007). In Defence of Gender Neutrality Within Rape. *Seattle Journal of Social Justice*, 6, 481. Retrieved from <http://ssrn.com/abstract=1316252>

<sup>28</sup> Status of POCSO Cases in India, Kailash Satyarthi Children's Foundation, March 2021. Retrieved from <https://satyarthi.org.in/wp-content/uploads/2021/04/Status-of-POCSO-Cases-2017-2019.pdf>

<sup>29</sup> Anoushka Coutto, Gender Neutrality in the Definition of Sexual Offences Under IPC, *Indian Journal of Integrated Research in Law*, Vol. 2 Issue 2. Retrieved from <https://ijirl.com/wp-content/uploads/2022/05/GENDER-NEUTRALITY-IN-THE-DEFINITION-OF-SEXUAL-OFFENCES-UNDER-IPC-.pdf>

<sup>30</sup> The Information Technology Act 2000

<sup>31</sup> Article 14, The Constitution of India 1950

<sup>32</sup> Article 15, The Constitution of India 1950

It is often argued that gender neutral laws for sexual offences are against feminist principles and will affect the protection of women.<sup>33</sup> It is also called a “backlash against feminism”.<sup>34</sup> But this is folly. There are various feminists who have advocated that gender is not the limitation of the victim or perpetrator of sexual offences.<sup>35</sup> The gender neutral laws relating to sexual offences will not make women victims more vulnerable rather it will strengthen them by removing patriarchal stereotypes which forces the women to adhere to the gender roles assigned by the society. It is further argued that it is impossible for a woman to rape a man and therefore there is no need for gender neutral laws. But the basis of this argument is the presumption of rape as penile-vaginal penetration.<sup>36</sup> But definition of rape in India is much more broader than this. It covers inserting an object, manipulating any part of the body so as to cause penetration and applying mouth.<sup>37</sup> Further erection always does not imply consent as there are various theories suggesting humiliation and anxiety etc. as reason for erection.<sup>38</sup>

### **Suggestions**

1. There should be collection of data for commission of sexual offences against males as records and data plays a vital role in policy making.
2. Amendment needs to be done in the Bharatiya Nyaya Sanhita 2023 to use the gender neutral language for sexual offences.
3. Gender sensitization workshops and seminars should be conducted in the school, colleges and workplaces to remove the stigma and stereotypes attached to male victimization.

### **Conclusion**

Men also face social stigma as women when it comes to sexual offences. It is difficult for men as well to come forward and report sexual crimes committed against them as it questions their masculinity. In the traditional approach, sexual offences are often stigmatized, with victims facing scrutiny based on societal expectations. When a woman is victimized, she's often judged on whether she conformed to traditional gender roles, implying that her actions or behavior contributed to the offence. Conversely, when a man is victimized, his masculinity is frequently questioned, perpetuating stereotypes and stigma. The patriarchal mindset of the society and the fear that it will have a negative impact on the female victims is the major reason behind the non-applicability of gender neutral laws in India. If the concept of gender neutrality is incorporated in the laws for sexual offences then women victims will also not have to pass the traditional gender role test and the evidence will be appreciated in the light of evidence only. In addition, Article 14

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<sup>33</sup> Rumney, P. (2007). In Defence of Gender Neutrality Within Rape (2007). *Seattle Journal of Social Justice*, Vol. 6, 481.(quoting Jocelyne A. Scutt, *Reforming the Law of Rape: The Michigan Example*, 50 *AUSTL. L.J.* 615, 616-17 (1976)). Retrieved from <http://ssrn.com/abstract=1316252>

<sup>34</sup> Novotny, P. (2003). Rape Victims in the (Gender) Neutral Zone: The Assimilation of Resistance?. *Seattle Journal of Social Justice*, 1, (Iss. 3, Article 62). Retrieved from <http://digitalcommons.law.seattleu.edu/sjsj/vol1/iss3/62/>

<sup>35</sup> Susan Brownmiller, “Against Our Will: Men, Women and Rape” Penguin (1975)

<sup>36</sup> Vipra J. (2013). A case for gender neutral rape laws in India, CCS working paper. Retrieved from [http://ccsinternship.files.wordpress.com/2013/05/286\\_case-for-gender-neutral-rape-laws-in-india\\_jaai-vipra.pdf](http://ccsinternship.files.wordpress.com/2013/05/286_case-for-gender-neutral-rape-laws-in-india_jaai-vipra.pdf)

<sup>37</sup> Section 63, The Bharatiya Nyaya Sanhita 2023

<sup>38</sup> Sarrel, P. M., & Masters, W.H. (1982). Sexual molestation of men by women. *Archives of Sexual Behavior*, 11, no. 2, 117-131. Retrieved from <http://link.springer.com/article/10.1007%2FBF01541979#page-1>

of the Constitution of India can be achieved in the true light only when all the sectors of the society have equality before the laws and equal protection of the laws.

There are countries where gender neutral laws are applicable for sexual offences and it has not negatively impacted the interest of women in those countries. In the British colonial era the Indian Penal Code 1860 was framed by Lord Macaulay to provide a comprehensive framework for the criminal legal system in India. A law should be of dynamic nature. With the passage of time the societal conditions changed and consequently the condition of women also changed. The United Kingdom changed their criminal legal system in 2003 and introduced Sexual Offences Act 2003 and made the laws gender neutral. But in India despite the introduction of the Bhartiya Nyaya Sanhita 2023, aimed at repealing colonial-era laws, the effort fell short as the new code retained most provisions from the Indian Penal Code 1860. Moreover, the provisions failed to incorporate gender-neutral language, undermining the code's potential for progressive reform. It is time for the legislature to recognize the needs of society and the existing gaps in the law, and to take the necessary steps toward enacting gender-neutral legislation for sexual offences.

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