
EXAMINING SEXUAL ASSAULT LAWS THROUGH A GENDER-NEUTRAL PERSPECTIVE

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ABSTRACT

Sexual assault laws have traditionally been framed through a gendered lens, positioning women as victims and men as perpetrators. Although this approach addressed systemic oppression against women, evolving social realities now challenge its adequacy in offering comprehensive legal protection. This paper critically examines the concept of gender neutrality in sexual offence legislation by analyzing constitutional principles, statutory provisions, judicial interpretations, and comparative international frameworks. Through doctrinal analysis of jurisdictions including India, UK and Canada, this study argues that while maintaining robust protections for women is crucial, a balanced and inclusive legal framework that recognizes all victims of sexual violence is essential to uphold equality, dignity, and justice.

1. Introduction

Sexual violence constitutes a profound violation of bodily autonomy and human dignity. Legal systems worldwide have criminalized sexual offences to safeguard individuals from such harm. Nonetheless, many of these laws remain gender-specific, based on the assumption that sexual violence is exclusively perpetrated by men against women. While statistical data often supports this assumption, the law must also recognize and address other forms of sexual victimization.

The question of whether sexual offence laws should adopt gender neutrality has gained significant academic and policy attention in recent years. Gender neutrality, in this context, refers to legal provisions that recognize any person—regardless of gender—as a potential victim or perpetrator of sexual violence. These laws focus primarily on the act, the absence of consent, and the harm caused, rather than the gender identities of those involved.

This paper investigates the doctrinal limitations of gender-specific sexual assault frameworks, explores constitutional and human rights implications, and assesses comparative legal approaches to advocate for comprehensive reform. The central thesis posits that genderneutral laws do not negate the reality of gendered violence but rather broaden legal protection to include male victims, transgender and non-binary persons, and survivors of same-sex sexual assault—ensuring that no victim of sexual violence remains invisible under the law.

2. The Gendered Structure of Sexual Offence Laws

2.1 India: The Bharatiya Nyaya Sanhita, 2023

India undertook a significant overhaul of its criminal law framework with the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the colonial-era Indian Penal Code (IPC).

Despite this comprehensive legislative reform, the sexual offence provisions largely retain a gendered structure.

Notably, Section 63 of the BNS defines rape as an offence committed by a man against a woman, thereby excluding male victims of penetrative sexual assault, transgender individuals, and female perpetrators from its ambit.

The repeal of Section 377 of the IPC, which had occasionally been invoked to prosecute nonconsensual male-on-male sexual acts, has resulted in a legal vacuum concerning non-female survivors of sexual violence.

This exclusion raises serious constitutional challenges under Articles 14 (equality before the law) and 21 (right to life and personal liberty) of the Constitution of India.

In contrast, the Protection of Children from Sexual Offences Act (POCSO), 2012, remains a progressive and gender-neutral statute.

It recognises children of all genders as potential victims and criminalises sexual acts based on the nature of the conduct and absence of consent rather than on gender identity.

The effectiveness of this framework underscores the practical viability of gender-neutral sexual offence laws within the Indian legal context.

2.2 UK: The Sexual Offences Act 2003

The Sexual Offences Act 2003 in England and Wales explicitly sought to establish gender neutrality across sexual offences. The Sexual Offences Review team emphasized that "in order to deliver effective protection to all, the law needs to be framed on the basis that offenders and victims can be of either sex." The Act made notable progress by broadening the definition of rape to include oral penetration and the use of surgically reconstructed genitalia.

Nonetheless, the offence of rape remains fundamentally gendered, as it requires penile penetration. While victims may be of any sex, offenders are legally restricted to males. Consequently, if a woman engages in non-consensual sexual activity with a man, the offence is classified not as rape but as "causing a person to engage in sexual activity without consent" under Section 4. Although this offence carries a potential life sentence in its aggravated form, it lacks the symbolic weight and social recognition traditionally associated with rape.

3. Constitutional and Human Rights Implications

3.1 Equality Before Law

Constitutional guarantees of equality require equal protection under the law. Gender-specific definitions of rape exclude certain victims solely on the basis of gender, thereby denying them

equal access to legal remedies.

This exclusion fails to meet the test of reasonable classification and undermines the principle of substantive equality. In the Indian context, Article 14 prohibits arbitrary discrimination, and the persistent exclusion of male and transgender victims from rape provisions raises serious constitutional vulnerabilities.

3.2 Non-Discrimination

While constitutional provisions may allow for special measures to address historically disadvantaged groups, protective discrimination cannot justify the complete denial of legal recognition to other victims of sexual violence.

Adopting gender-neutral laws would not diminish the special protections afforded to women but would instead expand the scope of justice to include all survivors, ensuring inclusive and equitable legal protection.

3.3 Right to Life and Dignity

Sexual autonomy and bodily integrity are fundamental components of the right to life and personal liberty. In *Justice K.S. Puttaswamy v. Union of India* (2017), the Supreme Court of India affirmed that privacy and bodily autonomy constitute fundamental rights.

The failure to recognize certain victims of sexual violence constitutes a direct infringement on their dignity and personal liberty, irrespective of their gender.

3.4 International Obligations

International human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its General Recommendation No. 35 on gender-based violence, advocate for comprehensive legal frameworks that address all forms of sexual violence.

While CEDAW primarily focuses on discrimination against women, evolving interpretations acknowledge that effective protection necessitates addressing sexual violence in all its diverse manifestations.

4. The Canadian Model: A Comparative Framework

Canada's sexual assault framework under Section 271 of the Criminal Code, enacted through Bill C-127 in 1983, offers a compelling comparative model. This framework criminalizes non-consensual sexual touching irrespective of gender, placing the focus on consent rather than anatomy.

Key features of the Canadian approach include:

- **Gender-Neutral Definitions:** Sexual assault is defined without reference to the gender of either the perpetrator or the victim, concentrating instead on the absence of consent.
- **Consent-Centred Liability:** The law emphasizes that consent must be affirmative, voluntary, and ongoing, regardless of the nature of the sexual act or the parties involved.
- **Tiered Offence Structure:** Canada employs a three-tier system of sexual assault offences based on severity, enabling proportionate punishment without relying on gender-specific definitions.
- **Protective Procedural Mechanisms:** Section 276 of the Criminal Code limits the admissibility of evidence regarding a complainant's prior sexual history, thereby protecting all victims from re-traumatization during legal proceedings.
- **Judicial Education:** Following Bill C-337, Canadian judges are mandated to undergo training on sexual assault law, including issues of consent and unconscious bias, reinforcing the proper application of gender-neutral principles.

The Canadian experience demonstrates that gender-neutral sexual assault laws can operate effectively while maintaining robust protections for victims and ensuring proportionate accountability for perpetrators.

5. Addressing Concerns About Gender Neutrality

5.1 Fear of Misuse

Critics contend that gender-neutral laws may be vulnerable to misuse, particularly through counter-complaints filed by accused persons against women.

However, such misuse is not unique to gender-neutral laws and can be effectively managed through stringent procedural safeguards, rigorous evidentiary standards, and penal consequences for false complaints.

The Indian POCSO framework, which adopts a gender-neutral approach, has not experienced widespread misuse, indicating that well-designed safeguards can successfully mitigate these concerns.

5.2 Dilution of Women-Centric Protections

Gender neutrality does not necessitate weakening protections for women. Enhanced sentencing provisions, victim-sensitive procedures, and specialised support mechanisms can coexist alongside gender-neutral legal definitions.

This approach shifts the focus from the identity of the victim to the nature and harm of the offence, ensuring comprehensive protection without compromising existing safeguards.

5.3 Physical and Anatomical Differences

Arguments invoking anatomical differences between men and women—such as the risk of pregnancy or disease transmission—have historically been used to justify gender-specific definitions of rape.

However, the inclusion of oral and anal penetration in contemporary rape statutes effectively negates the pregnancy-based justification. Regarding disease transmission, there is no evidence to suggest that it is uniquely associated with penile penetration in a way that warrants excluding other forms of non-consensual sexual acts from the legal definition of rape.

5.4 Physical Strength Assumptions

The assumption that men cannot be raped due to their physical strength compared to women reflects harmful gender stereotypes rather than biological reality.

Individual circumstances vary significantly, and factors such as intoxication, unconsciousness, coercion, and power imbalances can render physical strength irrelevant.

The law must focus on the harm caused rather than relying on stereotypical assumptions about

gender and physical capability.

6. The Way Forward: Recommendations for Reform

Based on the analysis of constitutional principles, comparative frameworks, and identified gaps in existing legislation, the following recommendations emerge:

1. **Adopt Gender-Neutral Definitions:** Sexual assault laws should define offences based on the nature of the act and the absence of consent, rather than the gender of the victim or perpetrator. This approach aligns with constitutional equality principles and international human rights standards.
2. **Centre Consent in Legal Frameworks:** Drawing from the Canadian model, consent should be defined as affirmative, voluntary, and ongoing, applied uniformly regardless of the gender identities of the parties involved.
3. **Retain Gender-Sensitive Sentencing:** While offence definitions should be genderneutral, sentencing frameworks may appropriately consider aggravating factors such as abuse of power, victim vulnerability, and historical patterns of violence against specific groups.
4. **Strengthen Procedural Safeguards:** Robust procedural protections must be implemented to prevent misuse while ensuring that all survivors have access to sensitive, fair, and effective legal processes.
5. **Invest in Judicial and Law Enforcement Training:** Mandatory, comprehensive training on gender-based violence, consent, and unconscious bias should be provided to judges, prosecutors, and law enforcement personnel to ensure the proper application of reformed laws.
6. **Develop Inclusive Support Systems:** Victim support services should be expanded and tailored to recognize and accommodate survivors of all genders, addressing stigma and barriers to reporting faced particularly by male and transgender victims.

7. Conclusion

The transition from gender-specific to gender-neutral sexual assault laws represents not a threat

to women's rights but rather an affirmation of constitutional equality and human dignity.

A criminal justice system that is gender-neutral in its legal definitions yet gender-sensitive in its application can more effectively fulfill the objectives of deterrence, protection, and justice.

Existing gender-specific frameworks perpetuate harmful stereotypes about men, women, and sexual violence, while creating legal gaps that leave male and transgender victims without adequate recourse—thereby violating fundamental principles of equality and dignity.

The comparative success of gender-neutral frameworks in jurisdictions such as Canada demonstrates that comprehensive reform is both viable and desirable.

Sexual violence is a profound violation of bodily autonomy that affects individuals across the gender spectrum.

The law must reflect this reality by focusing on the harm caused and the absence of consent, rather than clinging to outdated assumptions about who can be a victim or perpetrator.

Only through such reform can legal systems ensure that no victim of sexual violence remains invisible under the law, and that justice is genuinely accessible to all.

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