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## OUTRAGING THE MODESTY OF MEN

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### ABSTRACT

It is expedient to mention that section 354 of the Indian Penal Code (IPC), 1860 which talks about outraging the modesty of a woman and section 375 of the Indian Penal Code (IPC), 1860 which talks about rape committed to a woman. And recently, the criminal laws got amended and the sections 354 and 375 of IPC were replaced by sections 73 and 63 of the new Bhartiya Nyaya Sanhita (BNS), 2023 respectively. But what our once again failed neither to discuss or nor to addressed is that a man can also be a victim of such crime. The previous act i.e., the IPC contained section 377 for unnatural offences which dealt with any sexual offences that was committed against the laws of nature which included two adults of same sex having intercourse forcefully or any person committing an act of sexual intercourse on any animal. But the present rape laws as mentioned in the new criminal law has no provision for it instead, they have added a different term mentioned as ‘unnatural lust.’

This paper will discuss how men can also be victim of such offences and where there, if any, any relief for them. Through this paper the authors in no way means to object upon the fact that the sexual offences in India against women is less heinous crime rather the authors wish to shed light on the fact that even men, although not in a very large number, but still, they are victims to such crime. The paper has been divided mainly into three sections where the first section will give us the basic introduction or idea about this crime. Moving on the second section will discuss as to what is outraging the modesty of a man and in the final section the paper will be concluded.

**Keywords:** Bhartiya Nyaya Sanhita, 2023, Indian Penal Code, 1860, Modesty, POCSO Act, 2012, Gender Neutral Laws, Sexual Offences, Unnatural Lust, Unnatural Offences

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## **INTRODUCTION**

As it is said that the law operates in society and with time law has evolved according to the needs of the society, but there are certain things which have neither changed and nor have been amended. For instance, the cases of women cruelty, harassment or inequality against women, instead of many stringent laws regarding these matters, the crimes have still not decreased but they keep on increasing almost every year. The cases of sexual harassment or rape are registered under section 354 and 375 of the Indian Penal Code, 1860 (or as per the new rules as the case may be). Although, the laws were amended in 2013 after a committee headed by former Chief Justice of India J. S. Verma consisting of three members submitted its report to make necessary amendments to the laws related to women cruelty and harassment so that such kind of cases can be decreased.

The laws were amended keeping in mind the victim being a girl or woman as frame of reference. The law makers here forgot to keep the fact in mind that the laws are needed to be gender neutral as the victim to a crime is not restricted to gender rather any person may be victim to a crime and the laws are to be applicable accordingly. But while the law was being amended the men were not addressed as the victim of such cases. This creates a big complication and is in contradiction with the fact that the laws of our country need to be gender neutral in order to serve justice to every individual of the country and if the law of the land does not give equal protection to all its citizens it is also in violation of Article 14 and 15 of the Constitution of India, 1950.

## **WHAT IS THE MEANING OF “OUTRAGING THE MODESTY OF A MAN” AND IS IT APPLICABLE IN INDIA?**

Outraging the modesty of a man is somewhat similar to the definition of outraging the modesty of a woman as defined in section 354 of the Indian Penal Code (IPC), 1860. The only issue which arises is that our law only addresses the outraging the modesty of women as a crime whereas, men do not have equal right in this case. There is no such clause which discusses that men can also be victims in such cases. Although the provision laid down in the Indian Penal Code before the enforcement of the new Bhartiya Nyaya Sanhita, 2023 had a provision under section 377 which stated for crime if a person forcefully has intercourse with other person of same sex or an animal which is against the laws of nature and such act was called as unnatural offences. But in the new act the provision of unnatural offences has completely been repealed instead a new term of unnatural lust has been mentioned in sections 38(d) and 138(4) but the

term ‘unnatural lust’ itself has not been defined in the act itself.

Even if there is no such rule there are instances in which a man has either been forced by a woman or by another man. If crime of such type is arising so the law also needs to be amended according to the need of time. The only law that defines that such kind of crime is even possible has been mentioned in the Prevention of Children from Sexual Offences Act, (POCSO) 2012. The act states in the sections 3 and 7 that any person may force a minor for any kind of sexual assault. But, according to the POCSO such act is only limited upon the minors and if the crime is committed between two adults of such nature, then there again arises the problem with the criminal justice system in our laws.

**Definition** – As of now there is no specific definition of the term ‘outraging the modesty of a man.’ The term modesty itself has not been defined anywhere in the Indian Penal Code, 1860 but it was discussed in the case of *Rupan Deol Bajaj v K.P.S. Gill*.<sup>4</sup> The Hon’ble Supreme Court of India in this case referred to the Oxford English Dictionary (Third Edition) and stated that, *“modesty is the quality of being modest and in relation to woman means ‘womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct’.”*

One of the main reasons why outraging the modesty of a man is not considered as a crime is because of the presence of patriarchy system in our country and throughout our history men have always been shown as the ones who are strong and can deal with their own problems. Even now, while we live in the era of globalisation and we talk about topics like feminism and gender equality we cannot accept the fact that a man can also cry. Men are seen as the protectors of their family which at times become a responsibility too tough for a person but they cannot share it with everyone because if they do so they will most commonly be mocked. So even if a man’s modesty is compromised people find it very difficult to believe and even more difficult to handle the situation because it is something we have not dealt with.

In the case of *State of Punjab v Major Singh*<sup>5</sup> the Hon’ble Supreme Court of India while defining the term ‘modesty’ specifically mentioned that, *‘the essence of a woman’s modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged.’* The court also stated that, a woman possesses modesty from her very birth as it is the attribute of

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<sup>4</sup> (1995) 6 S.C.C. 194

<sup>5</sup> 1966 SCR (2) 286

her sex. The court while interpreting modesty in the case recognised it to be an attribute which is based on the gender of the person and thus based it to be only a woman's attribute.

The first time gender neutrality for rape laws was promoted in India was during the 172<sup>nd</sup> Law Commission of India in March, 2000 which requested the rape laws in India to be gender neutral and not gender specific so that the rights of male victims in such cases can be protected. But the request for amendment for gender neutral rape laws was discarded at that time. In the new criminal law system i.e., the BNS, 2023 the section 2(9) includes 'he' to be all person as men, women or transgenders thus ending the part of gender differentiation in the criminal justice system yet in section 63 of the act it again has represented only female as victims of rape cases by time and again stating in the said section women as victims of the case and has failed to establish even the slightest chance of a male being the victim of such cases. The General Clauses Act, 1897 in section 13(1) states that any word in any case or law importing masculine gender will also include female, but it does not talk about any condition in which feminine gender might be representing men. Therefore, the laws of India fail to establish gender neutrality among the victims and the accused of sexual harassment or rape cases. Furthermore, the only section that saw men as the victims of rape cases and not as the victim of someone who has been disrobed of their modesty was the section 377 of the Indian Penal Code, 1860 that discussed about unnatural offences by stating the condition if two adult of same sex have intercourse and if any of the parties has involuntarily participated in the act it was said to be unnatural offence as it was an act committed against the laws of nature and that too forcefully but the new laws of the criminal justice system have completely repealed this part instead a new term 'unnatural lust' has been added in sections 38(d) and 138(4) of the BNS, 2023. Although, the term 'unnatural lust' finds no meaning in the Indian laws its context with regard to the specified sections cannot hold same value as the unnatural offences which was previously prescribed in section 377 of the IPC, 1860. The sections 38(d) and 138(4) although deal with unnatural lust but the main context of both the sections is private defence and kidnapping. Section 38(d) deals with private defence against any person who assaults a person for gratification of his unnatural lust whereas, section 138(4) deals with punishment with regard to kidnapping of a person for unnatural lust. The term 'unnatural lust' has been used but its definition has not been explained in any scenario as to what act may be called as unnatural lust. The simplest interpretation of the term may be as to any act of gratifying lust of a person against the conducts of nature may be termed as, 'unnatural lust.' But, this interpretation may either have a very wide ambit or may have a very narrow ambit as to how a person pursues it. This

non-defining of the term leaves a great loophole for the perpetrators of who come within the ambit of this term.

In furtherance to this, the section 376(2)(g) of the IPC, 1860 which dealt with the provisions of 'gang rape' which has now been modified to section 70 in the BNS, 2023 states perpetrators to be any person irrespective of gender thus, stating that there is a possibility of gender-neutrality in the case of perpetrators but the same privilege has not been granted to the victims of the case as the lawmakers have clearly stated again women as the victim of such cases. With the fact being that rape is the ultimate and the most grievous form of crime with regard to sexual offenses and our laws do not consider at any part that men also being a part of the society can not only be the perpetrator but can also be the victims of such cases.

## CASES & STATISTICS

There have been many incidents where the victim was not a woman rather a man or boy in the case of sexual abuse but the case for it could not be filed because of the lack of the law or due to the fact that people in general find it very difficult to believe that such an incident can also take place and that men can also be the victims and not the perpetrators. Most of the times it also happens because the victims are not aware as to how should they approach to any authorized person or how should they tell about the incident to anyone else. For example, *'in Jalandhar, Punjab in the month of November, 2022 four women around the age of 22-23 years kidnapped a factory labour on the pretext of asking address in night and raped him in a car. The victim did not file a complaint regarding this because of shame and embarrassment.'*<sup>6</sup>

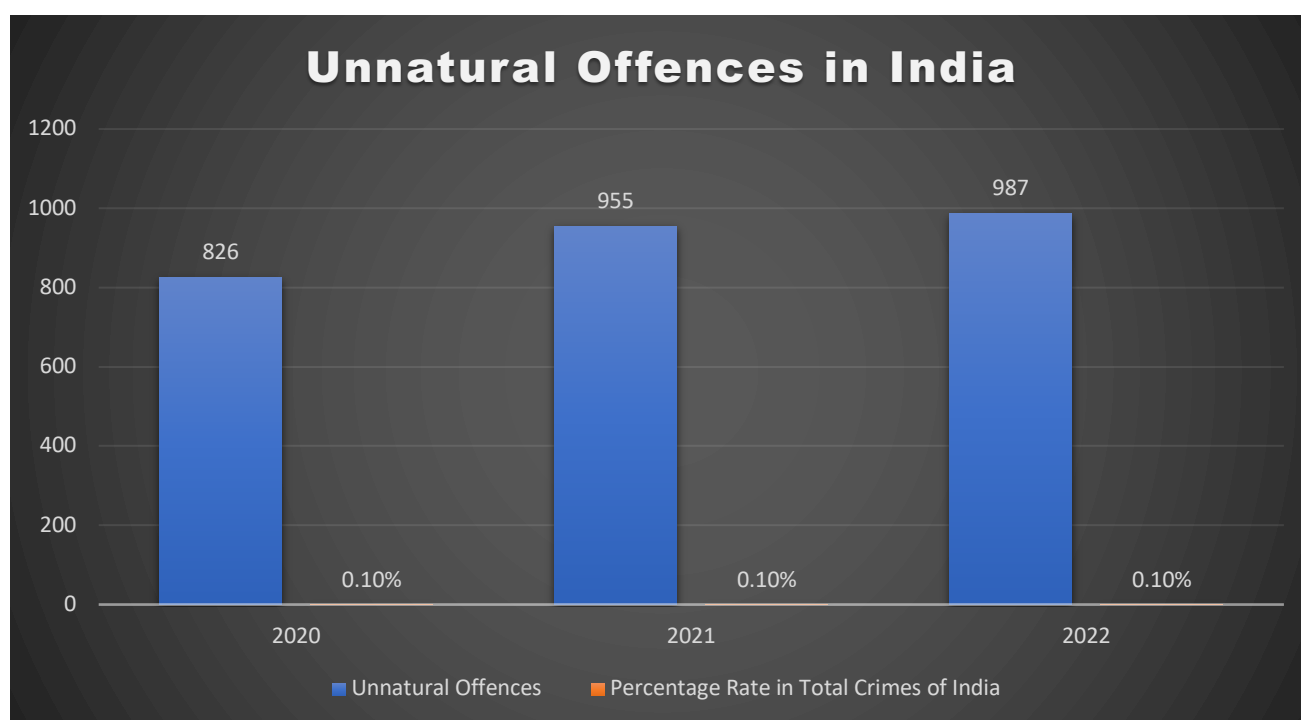
In another case, five men sexually assaulted two men who were Bangladeshi nationals. *'The incident took place when the victims were visiting Ram Lila on 17<sup>th</sup> October, 2023 in Delhi's Shakarpur. The accused after getting to know that the victims were gay couple sexually assaulted them. Three of the accused were arrested and were booked under sections 323, 377 and 34 of the IPC and the other two were still yet to be caught.'*<sup>7</sup>

If we look at the 2022 report of the National Crime Records Bureau (NCRB), we can see that the cases related to unnatural offences have been in a constant rise throughout the previous years.

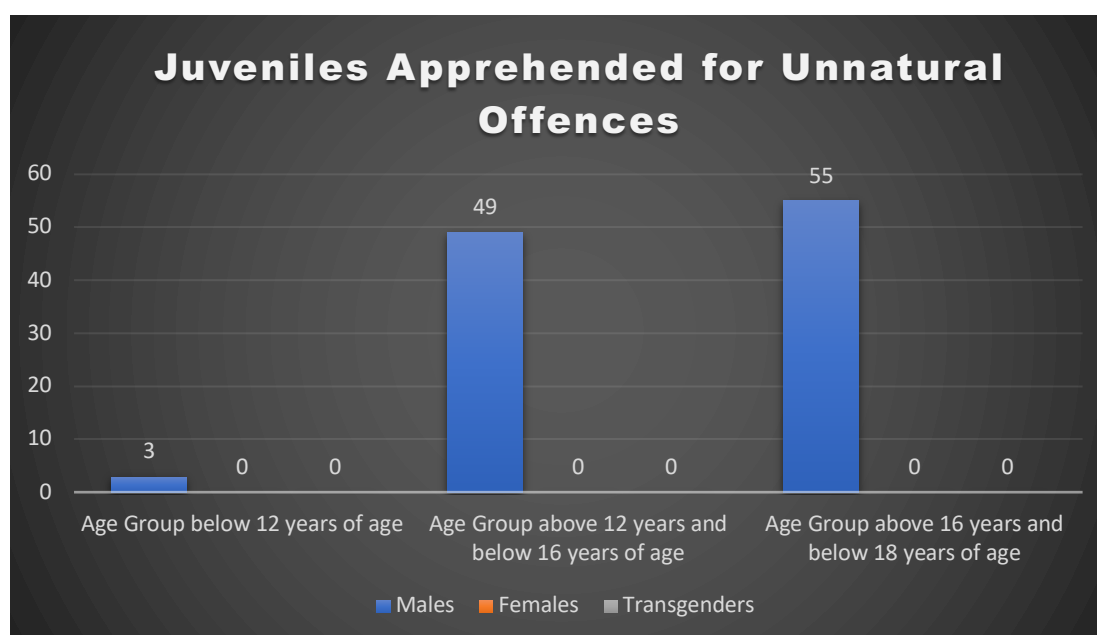
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<sup>6</sup> Men Too: 4 Women Allegedly Kidnapped, Raped A Factory Worker Overnight In Jalandhar (bnblegal.com) (last visited on 08.01.2024 at 06:30 p.m.)

<sup>7</sup> Three arrested over gang-rape of two men in Delhi's Shakarpur - India Today (last visited on 09.01.2024 at 10:16 a.m.)



From the above graph it can be seen that the cases of unnatural offences have been in a constant rise with the crime-head being 826 in 2020, 955 in 2021 and 987 in 2022. Unnatural offences throughout these three years have had a share of 0.1% crime rate in India.<sup>8</sup>

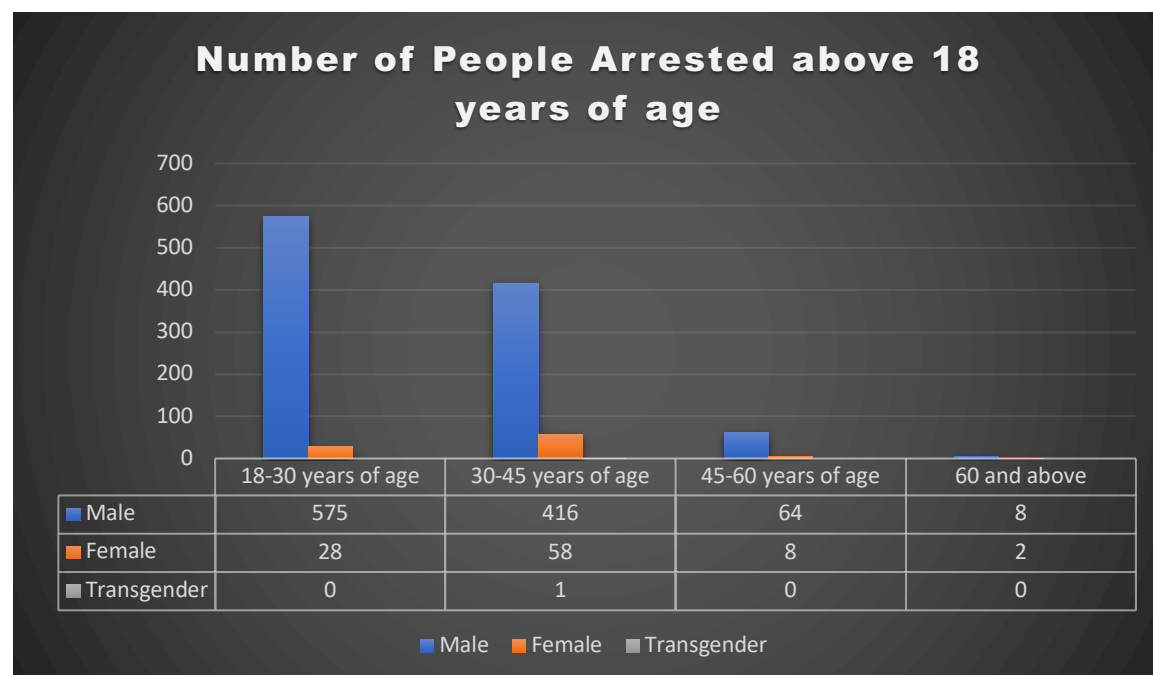


The above graph shows the juveniles apprehended from different age groups for the case of unnatural offences. The maximum apprehension can be seen at the age group of 16-18 years of age. The total reported cases are 77 and the total apprehended are 107.<sup>9</sup>

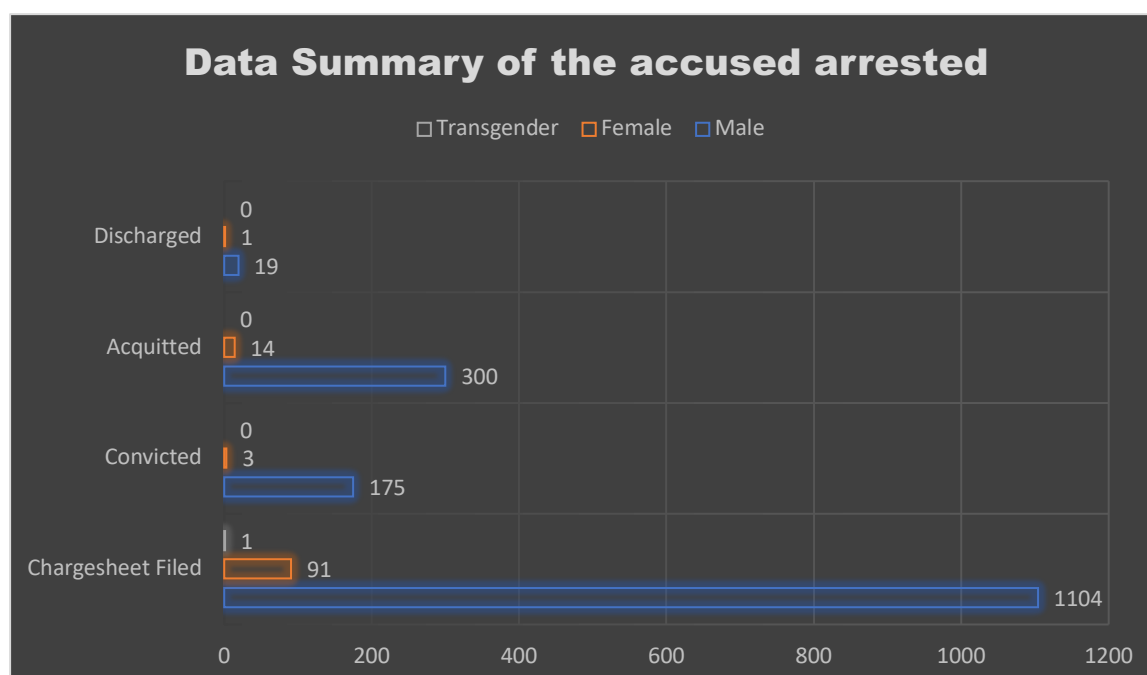
<sup>8</sup> 1701607577CrimeinIndia2022Book1.pdf (ncrb.gov.in) (last visited on 09.01.2024 at 11:29 a.m.)

<sup>9</sup> *Ibid*

The number of people arrested for the same crime increases by a great number if we look at the higher age groups.



As the above graph represents the maximum number of accused are males and that too between the age group of 18-30 years of age. Whereas, the number of accused in female is the most between the age group of 30-45 years of age and this is the only age group which also has a transgender as an accused.<sup>10</sup>



<sup>10</sup> 1701608543CrimeinIndia2022Book3.pdf (ncrb.gov.in) (last visited on 09.01.2024 at 03:48 p.m.)

If we summarize the data, we can observe that, out of the total 1267 arrests for the case of unnatural offences chargesheet was filed against 1104 male; 91 female and 1 transgender. Similarly, the rate of conviction was 175 males; 3 female and 0 transgender. The number of people acquitted were 300 males; 14 females and 0 transgenders and the count of people discharged were 19 males; 1 female and 0 transgenders.<sup>11</sup>

## COMPARATIVE ANALYSIS FROM RAPE LAWS OF OTHER COUNTRIES

Around seventy seven countries have accepted and agreed to make sexual offenses to be gender neutral.<sup>12</sup> The International Criminal Law defines rape to a gender neutral crime by stating rape to be a war crime as the sexual abuse in wars is not limited to women only. Further, the International Criminal Court defines the essential elements of rape to be penetration no matter how slight of the victim or of the accused with a sexual organ, or of the oral or rectal cavity of victim with any object or part of the body.<sup>13</sup> In the case of *The Prosecutor v Jean-Paul Akayesu*<sup>14</sup> the International Criminal Tribunal for Rwanda (Appeals Chamber), Tanzania (ICTR) held that rape is a crime against humanity irrespective of gender and it was also held that rape or any other forms of sexual offenses constitute genocide. It was also the first case in which rape committed on any person was penalized thus removing the barrier of the crime being gender specific.

According to the rape laws of the United Kingdom, the country has made rape laws to be gender neutral and states men to be victims of sexual assault too. The Criminal Justice and Public Order Act, 1994 was amended and it identified men to be victims of sexual offences as well.<sup>15</sup> Furthermore in 2003 the Sexual Offences Act, 2003 was amended and the term man/woman was omitted and was replaced with the word 'persons' in section 1 of the act while defining rape thus completely excluding the probability of the crime to be gender specific.<sup>16</sup> Although, the laws identify men to be victims of rape cases but it does not mentions women or transgenders to be accused of such crime and subjects them to crime of sexual assault thus providing with a lesser punishment.<sup>17</sup>

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<sup>11</sup> *Ibid*

<sup>12</sup> Gender Neutrality of Rape Laws, International Journal of Law Management and Humanities, Volume 4, Issue 4, Page 2155 - 2160

<sup>13</sup> View of Male rape and sexual crimes in International Criminal Law jurisprudence: a critical appraisal (ujaen.es) (last visited on 15.01.2024 at 11:13 a.m.)

<sup>14</sup> ICTR-96-4-A

<sup>15</sup> Criminal Justice and Public Order Act 1994 (legislation.gov.uk) (last visited on 12.01.2024 at 11:29 a.m.)

<sup>16</sup> Sexual Offences Act 2003 (legislation.gov.uk) (last visited on 12.01.2024 at 11:33 a.m.)

<sup>17</sup> Need for Gender Neutral Rape Laws; penACCLAIMS, ISSN: 2581-5504, Volume 7 November, 2019



The United States of America in 2013 amended their criminal laws making necessary changes. One such change was related to sexual offences. The 2013 amendment changed the definition of rape in section 2441 which deals with war crimes and defined rape in 2441(d)(G) by including the term person at the place of any gender specific victim thus, making the law gender neutral for rape victims.<sup>18</sup> Furthermore, the Title 10 of the US Code which deals with military laws has also defined rape in Section 920 Article 120 of the US Code. It states rape to be a sexual act committed by a person upon another using unlawful force, causing bodily harm, threatening the other person, making the person unconscious and then committing the act such people will be held guilty of rape and will be punished as per the court-martial directs.<sup>19</sup> This shows that the United States have declared their rape laws to be gender neutral for both common public as well as army personnels thus also making the law equal for all people without discriminating them by any means.

## CONCLUSION

Thus, it can be concluded that, there is no denying on the fact that most of the times men are accused with crimes related to sexual offenses but in the recent years crimes against men have also increased. Men are now no more only the accused of such cases but they have also become victim of such cases. Although there are chances that such crime was being committed from a very long time it is we who have recognized sexual offenses against men to be a crime and that such crime does takes place in our society and that it should be punishable. However, there are many people who still do not think that outraging the modesty of men can be a crime but we can atleast provide the same protection to men in law as women are provided so as to maintain the balance of law and to diminish the chances of discrimination in criminal laws. The demand to make rape and other sexual offences gender specific is the need of the hour and that age should not be a barrier for law. As of now, since our society or law makers do not agree for such crime and does not identify it much such crime can be categorized under the term of 'Latent Crimes' and it should be looked upon as such because although it is not recognized as a crime in general it is nevertheless a crime and should be treated as such.

The repealing of section 377 of IPC, 1860 in the new BNS, 2023 should be included again as it tried to provide protection to those men who were victims of rape. Although the laws do not

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<sup>18</sup> <https://www.govinfo.gov/content/pkg/USCODE-2013-title18/html/USCODE-2013-title18-partI.htm> (last visited on 15.01.2024 at 10:36 a.m.)

<sup>19</sup> 10 U.S. Code § 920 - Art. 120. Rape and sexual assault generally | U.S. Code | US Law | LII / Legal Information Institute (cornell.edu) (last visited on 15.01.2024 at 10:45 a.m.)

provide the protection to those men whose modesty has been compromised with in any manner the rape victims were being provided with justice. Also, article 14 of the Indian constitution talks about equality in all manners so there should also not be any distinction among the accused with respect to gender. The article 21 further provides that all people shall have right to life free from any form of violence or discrimination. Thus, provisions should be passed which protect the dignity and modesty of men and the ambit of accused should not be limited to only a male and any person who commits the crime should be seen as perpetrator and should be punished as per the law.

Therefore, at last we may conclude that if men and women are to be treated equally, they should be provided equal protection under law and no one should be discriminated on the basis of certain crimes. Since, the old tradition of patriarchy system also plays a key role in men not reporting these crimes such system should not prevail and sexual offenses against men should be identified as a crime against humanity rather than a crime against a specific gender.