

GENDER NEUTRALITY IN RAPE LAWS : A PRESSING PRIORITY

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1. INTRODUCTION

“The only stable state is the one in which all are equal before the law” - Aristotle

Rape is one of the most heinous crime that is being prominently reported in India nowadays. In the midst of the growing feminine consciousness in the society India has tightened its rape laws a bit more stringent in order to ensure justice for victims and punishment for perpetrators. Under sections 375 of Indian Penal Code (45 of 1860) ,which defines rape, it is perceived to be an offence that can be done only by a man against a woman. Thus under s.376 of the code, only a man can be convicted for committing rape. This idea is rooted in the historical perception of a male dominated society that conceptualized rape as the sexual victimization of women by masculine perpetrators. But in this modern era , it has been noticed that rape is not only limited to female gender, and other genders such as both heterosexual as well as homosexual men and transgender people are also at risk of rape. On that account, gender neutrality in laws related to rape and sexual assaults is indeed a need of the hour.

Gender neutrality is a concept of annihilating the distinction between sexes, in the drafting and implementation of laws, especially, when the law is to address an issue that is common to all the genders, viz male, female and transgender. The main goal of this concept is to make every citizen entitled to equal rights and to extend the protection of law for all persons regardless of their gender. Moreover every person has an inherent right to sexual integrity and autonomy. This right is in turn reinforced by the Article 14 , 15 and 21 of the Constitution of India.

India’s rape laws, which has undergone several changes over the last few decades including a major revamp in 2013, continue to be counterrevolutionary and proliferate patriarchal gender stereotypes. At a time once several countries round the globe are adopting gender neutral rape laws which recognizes the idea that a person of any gender can be a potential victim/ survivor or perpetrators, India keeps on following a law which primarily depends on the principles of penile

and vaginal penetration. This is a serious and dangerous stereotypes which denies equal status, liberty and freedom to a section of the society.

2. THE HISTORY OF RAPE LAWS IN INDIA

Rape laws have been recognized by all the countries. The offence of rape has its history as old as human civilization. In olden days besides the motive of deriving sexual pleasure, this offence has been committed so as to establish a power or control over another person. Thus historically, rape is considered as a gender specific offence that can be done by a man solely against a woman. Indian rape laws are also fundamentally founded on this historical notion.

In India 'rape laws' begun with the enactment of the Indian Penal Code in 1860. After 1860, the code was subjected to certain reforms through various amendments in many instances and the main issue of focus remained on the definition of rape. The first reform in this regard was the Criminal Law (Amendment) Act of 1983, on backdrop of the Mathura Rape Case¹, the landmark case which witnessed massive women right movements across the country.

2.1. Criminal Law (Amendment) Act, 1983

The major reforms brought about by this legislation were that rape trials should be held as 'in camera proceedings' under section 327 of CrPC and disclosure of the name of the victim was penalized under section 228A of CrPC. Besides these, an enhanced punishment was set for custodial situations under 376(2) of IPC and Presumption of absence of consent in specific situations was inserted under section 114A of Indian Evidence Act, 1872. Along with these the onus of proving consent was shifted to the accused from the prosecution. As far as the Indian Rape laws are concerned, this was one of the foremost reforms in the post independent era.

2.2. Indian (Evidence) Amendment Act, 2002

The amendment restrain the defense from asking humiliating questions pertaining to the morality and sexual history of the prosecutrix, during cross examination. The amendment repealed the

1. *Tukaram and Another v. State of Maharashtra*, 1979 AIR 185, 1979 SCR (1) 810

section 155(4) of the Indian Evidence Act 1872 as the section technically stated that the victim's sexual history is important as it gives a direct knowledge to the morality of her character.

2.3. Criminal Law (Amendment) Act 2013

The year 2013 witnessed a major revamp to the rape laws of the country. The Gang rape and murder of a 23rd year , Physiotherapy student 'Nirbhaya' in the heart of capital city in 2012 sent shock waves across India and round the world. Soon after getting immense pressure and consequent uproar from socio-civic groups, central government constituted Justice Verma Committee to reframe the sexual assaults laws India. As a result, significant changes pertaining to the definition of rape under section 375 of IPC, its punishment were proposed. Moreover fast track courts were introduced in the country for dealing with rape trials.

In the aftermath of proposals made by the J.Verma committee, the stop gap legislation, Criminal Law (Amendment) Act was passed by the parliament in 2013, which had redefined rape in a broader perspective making it much more stringent. Prior to the 2013 reforms, definition of rape was limited to penile –vaginal penetration. But, now it has a wider ambit, as it covers all kinds of sexual attack on women not limited to penile vaginal penetration.

3. DEFINITION OF RAPE UNDER S.375 IPC

S.375 of Indian Penal code gives a statutory definition for the offence of rape whereas s.376 of the code punishes the same. As per s. 375 of IPC,

A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

(1) Against her will.

(2) Without her consent.

(3) With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

(4) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(5) With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

(6) With or without her consent, when she is under eighteen years of age.

(7) When she is unable to communicate consent.²

The definition under the s.375 of IPC starts with the phrase “*A man is said to commit “rape”..*” and defines that, what rape would constitute in such a case is, rape of a woman. The crux of the offence of rape under section 375, IPC is sexual intercourse by a man against her will and without her consent. However, the definition is now not just limited to forcible penile - vaginal penetration. Now it includes the act of penetrating penis, or any other object other than penis (sexual assault), into the vagina, urethra or anus of a women, or manipulating any part of body of a woman to cause such penetration or applying his mouth to the vagina, anus or urethra of a woman or makes her to do so with him or any other person.

If we analyze this definition of rape under this section, we find that it makes two clear, albeit subtle, inferences:

2. Section 375 of Indian Penal Code, 45 of 1860

- Firstly only a woman can be victimized in rape
- Secondly only a man who can be liable for rape.

In consequence, the only role Section 375 of Indian Penal Code accords men is the role of the perpetrator of rape. Furthermore it manifests that, in India there's no particular law if a male rapes another male or a female rapes a male or if a female rapes another female. Indian legal standards have now evolved from viewing rape as just a penile – vaginal to penile- orifice penetration with a non-consensual context. According to the latest definition (Supra) any physical violation using a kind of blunt objects as suffered by Nirbhaya would also can be classified as rape. Yet if the setting had been an Indian women's jail and the exact same violation had occurred by fellow prisoners, there would be no rape. To be sure, it would be an assault-based crime of some form, but not rape even though the victim would have been forcefully penetrated in a sexual manner by her assailants³.

In short, the penal law regarding rape was amended in 2013 with a view to modify its definition so as to give it a broader scope and jurisdiction. But still it renders some sort of ambiguity while dealing with specific cases of male and transgender victimization because of gender barriers. Furthermore the definition contained under section 375 also seems to be conflicting with the provisions under s.377 of IPC.

4. GENDER NEUTRALITY IN RAPE LAWS

4.1. MEANING OF GENDER NEUTRALITY

Gender neutrality in the sense means the act of being inclusive, while legislating on an issue that is applicable to all genders in common. It emphasize on the equal treatment of men, women and third gender (transgender) people in the society in socio-economical and legal aspects. Gender neutrality is essentially the spirit of the Constitution. Article 14 of the Constitution of India provides that state shall not deny any person the equality before law and equal protection of law and Article 21 reinforce the right to life and personal liberty. Moreover, the preamble to the

3. John Stokes, *India's Law Should Recognize that men can be raped too*, SCROLL.IN, (Sep 11, 2014,1:30AM), <https://scroll.in/article/676510/indias-law-should-recognise-that-men-can-be-raped-too>

constitution of India uphold the idea of social, economic, political freedom and justice which inherently include gender justice also. Therefore our legislative frame work, which is founded on and owes its existence to a constitutional order should refrain from distinguishing persons based on gender roles, to avoid discrimination on the basis of sex.

4.2. SCOPE OF GENDER NEUTRALITY IN SECTION 375

Gender neutrality in current rape laws can be viewed in two major perspectives. They are :

- i) Gender neutrality with respect to the victim
- ii) Gender neutrality with respect to the perpetrator.

4.2.1. Gender Neutrality with Respect to Victim

It is unfortunate that Indian legal system still observes the offence through gender lens, where it is an offence that can be done only by a man solely against a woman. The law remains to be silent to the fact that, male and transgender can also be sexually assaulted and raped. This idea is fundamentally rooted in the historical perception that rape is something which is done for the gratification of lust or a strong sexual desire. But this is not at all true in the modern scenario. Rape can also be committed in order to exhibit one's superiority or dominance over the other. It may be directed against a man, woman or a transgender. But the patriarchal ideology that persist in our social sphere, makes it difficult to accept the reality of male and transgender victimization.

Male Victimization

Men are sexually abused by women on occasion, but they are most often sexually assaulted by other men. As we have stated earlier, rape is an act of showing one's dominance over other. So, the assailants at time uses weapons, physical force or threat of such force get a control over the other. They may also blackmail the victim or may use their position of power (especially when the assailant is in a position to dominate the will of other) to force them into submission. Others use alcohol, drugs, or a combination of the two to keep their victims from fighting back. It is a violation of a man's body and free will, regardless of how it occurs, and it can have long-term emotional

consequences.⁴ Some of the issues surrounding male sexual victimization are discussed below

- **Patriarchy**

Recognizing male rapes in India is still a taboo, and has a negative connotation among heterosexual and homosexual men. Community often react to the sexual orientation of male victims and the gender of their perpetrators. It may be difficult for male victims to report a sexual assault they experienced, especially in a society with a strong masculine custom.⁵ These are deep rooted in the strong patriarchal myths that sexual assault or sexual exploitation does not affect men. Besides men to men rapes, woman at times can also coerce men into sexual activity without his consent.. However, strong and deeply entrenched social beliefs impel men to believe that "all sex is good." In addition to this, male victims may be concerned that people will doubt their sexual orientation and may label them as homosexual, especially if raped by a male, or that they may be seen as un-masculine because they were a victim. Such feelings of toxic masculinity in the community create an impression that men are not susceptible to sexual abuse.

- **Emotional Trauma**

Another social stereotype exist in the society regarding male rape is that males are less subjected to traumatization, hence the chances of being affected by sexual abuse is rare. But this argument Does not hold water in the modern social arena. According to studies, the long-term effects of sexual abuse and assault are harmful to either sex, and males may be especially harmed due to the existing social stigma and disbeliefs regarding their victimization. The false presumptions on manliness and masculinity creates immense pressure to the male victims as they feel intense guilt and embarrassment.

- **Presumption of Forever consent (Men always want sex)**

Another major false hood prevailing in our community regarding male victimization, is that “men always want sex”. It is believed that mere erection of the penis or ejaculation during sexual intercourse means that man really wanted sex. But penile erection or ejaculation is purely a physiological process that can also result from a mere physical touch or even extreme stress. Hence it cannot be taken as an indication that the victim has consented to the sexual assault.

4. Jeff Kulley, *For male survivors of sexual assault*, UNIVERSITY OF TENNESSEE, <https://counselingcenter.utk.edu/self-help-materials/for-male-survivors-of-sexual-assault/>

5. Wikipedia, *Rape of Males*, Last updated on 14 Mar 2021, 2:33, https://en.wikipedia.org/wiki/Rape_of_males

Transgender Victimization

Transgender (sometimes may be referred to as “trans”) community often recognized as ‘Hijras’ constitute the most marginalized, neglected and stigmatized section of our civil society. The term “transgender” describes a class of persons whose gender identity is different from which they have assigned by birth.⁶ If we take a look at the history of Indian subcontinent we can trace the evidences of third gender recognition and acceptance in the ancient Indian society. The myths in India’s Ramayana and Mahabhratha also make certain references to “Third Gender” which indicates that India was a home for transgender community from time immemorial. But during colonial rule in India, imposed Victorian morality introduced ruthless policing on what colonial authorities deemed aberrant gender and sexual expression, thereby villainizing and ostracizing the ‘hijra’ community of the country. This trend of non-recognition and social ostracization continued even in the post independent era. But later in 2014, through its revolutionary and landmark judgement in the case *National Legal Services Authority (NALSA) v. Union of India*,⁷ Supreme Court of India established legal recognition of the “Third Gender”. Although the problem of legal recognition of rights of transgender people has been solved to an extent, social acceptance of this community has not yet materialized. This makes them highly prone to sexual offences than other genders.

Recently a study conducted by Peoples’ Union for Civil Liberties Karnataka (PUCL-K) reveals the shocking reality of transgender victimization in India. In one such narrative, twenty three year old Sachine relives his trauma after being abandoned by a client in the middle of a ring road. What followed was a sexual assault by a policeman, which left him bleeding and in pain. His nightmare, seeffied never ending, when soon after, a van full of tourists stopped and took turns on him until he was too weak to even protest⁸. The report raises serious concern over the right of sexual integrity and autonomy of members of transgender community.

Despite the NALSA judgement, there exist a legislative vacuum, with respect to the protection of transgender rights. There is no penal provisions in India which may protect the third gender people

6. Wikipedia, *Transgender*, Last updated on 11 Mar,2021,17:12, <https://en.wikipedia.org/wiki/Transgender>

7. (2014) 5 SCC 438

8. PUCL-K, *Human Rights Violation against Transgender Community*, ed.2003 september, p25-26, http://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf

from sexual assaults by man, woman or another transgender. The ‘Transgender Persons (Protection of Rights) Act, 2019, which was the first law in India governing third gender was in turn more deplorable. The legislation was further discriminatory especially in matters of sexual offences against the members of third gender community. Section 18(d) of the Act provides :

— *Whoever, harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse ,shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine*⁹

This section is outrightly discriminatory as it treats the sexual offences against transgender community as petty offence when compared to similar offences against women. The wordings of the section trivialize the gravity of the offence when similar offence against women, is treated with utmost importance. It is ironic that when sexual assault against women is punished with an imprisonment for a life time, similar bodily assaults against transgender people (particularly transwoman) has not given much attention. This insensitivity of laws towards the rights and dignity of ‘third gender’ people would increases their vulnerability to such sexual abuses and assault in our current social sphere. In spite of the Supreme Court ruling that “the persons” falling under Article 14 of Constitution of India would include third gender people as well, failure to extend equal protection of law to members of trans community would results in serious violation of the basic constitutional spirit.

4.2.2 Gender Neutrality with respect to perpetrator

S.375 of Indian Penal Code explicitly begins with the phrase “ A man is said to commit Rape...” from the wording of this section itself, it can be assumed that rape is something that can only be committed by a man. But women in power, whether professionally, physically or emotionally, are also capable of coercing men into sexual activity without consent. Thus the concept of gender neutrality with to respect to perpetrator means, acknowledging that both man and woman can be

9. S.18(d) of Transgender Persons (Protection of Rights) Act 2019

the perpetrator of rape. There are two possibilities in this regard, that are not currently recognized by law.

- i) Female on Male Rape and
- ii) Female on Female Rape.

Female on Male Rape

As per definition, rape is considered as a penetrative assault on women. This limited phallus centric definition of rape under s.375 of IPC makes it legally impossible for a woman to rape a man. Thus if a woman forces a man to have intercourse with her, it would not constitute rape under our current legal standards. This discriminatory approach of the law regarding sexual assault may have evolved from the common misconception that it is physically impossible for a woman to rape a man.

It is not physically impossible for a woman to rape a man.

It is widely held belief that, due to the mechanics of sex, it is physically impossible for a woman force a man to have sex with her, without his consent. One of the potential justifications of this argument is that, in order for a woman and man to have sex, he need to be aroused and such an arousal or erection indicate that he is consenting to the sex. But this isn't true. Medical researches prove that, arousal during sexual assault, can happen involuntarily as a natural physiological process. For example, woman when victimized in rape, can also show physiological responses like lubrication and orgasm at the time of rape. This necessarily do not implies a consent on part of women. Sexual arousal and orgasm are purely originating from the reflex –driven Autonomous Nervous System, the same system responsible for involuntary acts such as heart beat, respiration and digestion¹⁰. Thus mere arousal and erection of penis during sexual assault, is not a relevant sign to conclude that the man is consenting to sex. In addition to this it is perceived that, anatomical difference between man and woman makes men physically stronger than women so that he could be able to resist any such attempt to commit a sexual assault by female. This is also not always true as a particular man might be physically weaker than the perpetrator or he may be in state of

10. Jenny Morber, *What Science say about arousal during Rape*, THE POPULAR SCIENCE, (May 30,2013), <https://www.popsci.com/science/article/2013-05/science-arousal-during-rape/>

intoxication, physically restrained, physically or mentally disabled or duped about women's identity etc.. where he is unable to consent to the act at his own free will.

Female on Female Rape

Similar to men on men rape, there are chances of female on female rapes as well. The common idea of a woman cannot rape another woman could not be held true always. There are instances where a female sexually exploits another female just to derive pleasure from humiliating the other. Under our current legal framework, even though a woman cannot be held liable for rape she can still be held liable for abetment under Section 109 of IPC. Moreover, in *State Government v. Sheodayal*¹¹, Madhya Pradesh High Court held that a woman can violate the modesty of another woman under Section 354 of Indian Penal Code, 1860.

S.375 of IPC is unambiguous and it explicitly states that “a woman cannot commit rape”. On the contrary the section 376(2)(g) of IPC uses the term “any person” rather than any man” while dealing with the issue of gang rape, which clearly projects the gender neutrality of the said section. However when the issue came before the court of law in the case, *Priya Patel vs. State of Madhya Pradesh*¹², Supreme court held that a woman cannot have an intention to rape, as it is conceptually inconceivable and therefore, she can neither be held for rape, nor gang-rape. The rule laid down by the court in this case is indeed a legal fallacy because the act of penetration itself is not a requirement, the intention is enough even if it's in the form of abetment. Moreover this erroneous judgment along with the gender specific section 375, accords women absolute immunity from any kind of rape liability.

4.3. NEED FOR GENDER NEUTRALITY IN RAPE LAWS.

India is a signatory of the The Universal Declaration of Human Rights, 1948, The International Covenant on Civil and Political Rights, 1966 and The International Covenant on Economic, Social and Cultural Rights, 1966. All these instruments uphold the sacrosanct right of every person to

11. 1956 Cr LJ 83 M.P

12. AIR 2006 SC 2639

equality and human dignity. There is no disagreement with the fact that women constitute the most susceptible and vulnerable class for rape in India. Be that as it may, a considerable number of both homosexual and heterosexual men and transgender people are also at the risk of such sexual offences in this modern era. Moreover, Justice Varma Committee which was setup after the Delhi Gang Rape case came to the conclusion, “Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same”.

Recently, in a survey conducted by the Centre for Civil Society (CCS), found that approximately 18% of Indian adult men surveyed reported being coerced or forced to have sex. Of those, 16% claimed a female perpetrator and 2% claimed a male perpetrator¹³. Thus we have to accept that in our modern society, it is not only women but men too are subjected to sexual assault, harassment and even penetrative acts through coercion. Even though male to male assaults are addressed by section 377 of IPC to a certain extent, there are no such mechanisms for finding justice for a male victim in India if the perpetrator is a female.

In *Bodhisatwa v Subhra Chakraborty*¹⁴, the apex court of India observed that “rape is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights”

In *State of Himachal Pradesh vs. Shree Kant Shekar*¹⁵, the Supreme Court of India held that, Rape is not only a crime against the person of a woman it’s a crime against the entire society. It was also emphasized that it is a violation of the fundamental right to life under Article 21 of the Constitution of India. As we know that men, women and transgender people are all equally entitled to rights under Article 21, rape laws of India should be reconstructed to be inclusive of the rights of all persons of the society irrespective of their gender roles.

13. *India’s Law Should Recognize Men can be Raped too*, CENTRE FOR CIVIL SOCIETY, <https://ccs.in/indias-law-should-recognise-men-can-be-raped-too>

14. 1996 AIR 922, 1996 SCC (1) 490

15. (2004) 8 SCC 153

In *Sakshi vs. Union of India*¹⁶, Supreme Court of India, framed precise issues regarding scope of term “Sexual intercourse” under s.375 to be dealt with Law Commission of India. The 172nd Law commission indicated its response to the issue and submitted changes for widening the scope of the offence in section 375 and to make it gender neutral. Various other changes have been recommended in sections 376, 376A to 376D. The committee have also recommended insertion of a new section 376F dealing with unlawful sexual contact, deletion of section 377 of the IPC and enhancement of punishment in section 509 of the IPC.

Our laws have a fundamental constitutional duty to safeguard a situation where a male or a transgender is forced to have sex and if they alleges it to be rape. Even if that’s the fact, Indian Penal laws and judiciary are having a culpable silence in recognizing such issues faces by male and transgender community in India.

4.3.1. Section 375 and 377 : Conflicting Definitions

Section 377 of IPC deals with unnatural carnal intercourse against the order of the nature. It includes, penile/anal penetration, finger/vaginal, finger/anal penetration and oral penetration with a man or a woman or an animal. This section primarily focus on the offences of sodomy and bestiality. Sodomy is penetration per anus by a man with a man or with a women and bestiality refers to sexual intercourse, either by a man or a woman with a non human animal or bird. It is a well settled fact that Section 377 is not a gendered law. So as per definition, if a man commits penile-anal penetration or finger – vaginal penetration on a women, it can be considered as an unnatural offence under s.377 of IPC. But at the same time if we look into the definition of rape under IPC, the very same act is covered by s.375 also under sub clauses (a) and (b). This creates a serious legislative as well as conceptual ambiguity with regard to sexual offences as the punishment preferred for both offences under IPC are slightly different. The 172nd Law Commission report, after recommending changes for widening the scope of offence under s.375, also proposed the deletion of section 377. Therefore in the interest of justice and equity, it would be appropriate to make s.375 gender neutral to address all kinds of “sexual assault” and thereby deleting section 377.

16. (1999) 6 SCC 591

4.3.2. POCSO Act is Gender Neutral

Gender neutral laws are not a new gloom to India. The Protection of Children From Sexual Offences Act, 2012 (POCSO) was enacted by the parliament to effectively address the heinous crimes of sexual assault and sexual exploitation of children through less ambiguous and more stringent legal provisions. As the Act enacted in 2012, was only applicable in the case of a girl child, but later in 2019 the parliament of India has amended the legislation so as to accord a gender neutral status to the same. Now, according to section 2(d) of POCSO Act, it defines “Children” as “any person” not being limited to boy or a girl.

In spite of the gender neutral status of the POCSO Act, our current legal framework fails to extend a similar protection to the adult male victims. There is no reason why the instances of sexual assault of male child under 18 years and that of adult men are treated differently by our legal machinery.

4.3.3. Gender Neutrality is still not out of question.

Here we have discussed the different dimensions of gender neutrality with respect to the sexual harassment laws in India. Gender neutrality in rape laws is not an unattainable dream. There was a 58-day period post Justice Varma Committee report when rape laws in India were gender neutral only before the Criminal Law (Amendment) Act of 2013, repealed the provisions. The repeal was due to immense resistance from certain feminist groups who argue that gender neutralization of current rape laws will further harm the interest of female victims and also female as perpetrator is a question far away from reality. But both these arguments are not at all true. There are classic examples where women are using rape laws to get an unfair advantage over a man. Making gender neutral rape laws will not harm any of the women’s right. All genders has to coexist in a democratic framework. If male and transgender victimization in India is a reality, then it could not be bogged down by majority patriarchal perceptions. Thus a proper gender sensitization training of our legislative and judicial machinery is indeed a need of the hour.

5. CONCLUSION

Law is an instrument of social change. The evolution of a democratic society is reflected in its legal system. By studying a law, we can gain a better understanding of the general perceptions of the society in which we live. Law and society are inextricably linked. Even though law is a product of society as a whole, in some cases law can effect social change too. The law will evolve in tandem with society. The major revamps in our criminal law on the aftermath of Nirbhaya incident is a classical example to this. Even so, there may be times when society expresses reluctance to a change in the law. That is what we are dealing with today in terms of gender neutrality in rape laws. Every piece of legislation in the country must be balanced. It must extend legal protection to all people, regardless of gender, colour, religion, race, caste, or custom etc.

In context of sexual assault laws of the country, our current judicial and legislative framework extend protection for only women victims where male and transgender victimization are consciously neglected. All person (all genders) need to coexist in the society. We cannot trivialize the suffering of male and transgender victims as it is incomparable and same for all. But still the interpretation of the law in a gendered language makes it legally impossible for a man to file a sexual assault case against a women or makes it difficult to establish a claim against another man in case of sexual assault. The condition of third gender people is also of no exception. Despite the judgement of the apex court granting them equal personal status as that of other genders, social realization of the same has not been yet materialized. Such limited definitions of rape and sexual assault which primarily evolved from the patriarchal presumptions, favors unequal treatment of person, in respect of sexual offences and violation of body, which is contrary to the basic principles of equalitarianism of the Constitution of India.

Indian legislative mechanism should evolve from recognizing rape, based on gender roles, just like Bhutan, United States and United Kingdom which now have their own gender neutral rape laws. There must be given due legislative attention to the reality that man can be raped and women can rape. It is the primary duty of the law to liberate society from age old patriarchal myths and to nourish the feelings of equality and brotherhood / sisterhood in our society.