

GENDER NEUTRAL LAWS

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ABSTRACT

Following the famous Delhi Gang Rape event in 2012 and the much-discussed case of Triple Talaq, there was an immediate need to condemn and enact harsher legislation against such atrocities against women. In the gang rape case, the government formed a committee headed by former Chief Justice of India Justice J.S. Verma to suggest guidelines for women's protection, which was to take the shape of the Criminal Law (Amendment) Act 2013, as well as gender-sensitive or specific to gender laws were proposed as an outcome of giving in to feminist difficulties opposing gender neutral laws suggested by the committee. The author scrambles around and assesses India's present protective legislation in light of gender-neutral laws, concluding by recommending the essential adjustments that may be enacted to ensure that all sexes are shielded equally under the law.

INTRODUCTION

According to Indian Penal Code Sections 375 and 376, only men can be held guilty of rape, and just women may be the victim. The rules regulating stalking, voyeurism, & sexual harassment are likewise gender-specific, which means that only women can become victims and only males can perpetrate the offences.

However, the rule governing acid assaults is gender-neutral since it uses the phrase "whoever." "The assumption that the victim of rape must be a woman is the core of Indian law. This is due to the assumption that rape is exclusively a sexual act committed to satisfy the offender's/perpetrator's sexual desire. It is a prevalent assumption that women always serve as the victims & men are always the offenders, however, guys also become victims of sexual offences and false accusations. India's outmoded standards governing sexual offences and how they restrict men and transgender individuals' access to court is a serious issue that must be addressed.

As we all know, the Preamble guarantees all individuals Justice, Liberty, & Equality in terms of position and opportunity. In accordance with Article fourteen of the Constitution, the state provides equal legal protection to all people inside Indian Territory. States are not permitted to discriminate solely on the basis of gender, according to Art.

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It goes further equality & offers women additional power through beneficial discrimination in line to Article 15(3), which enables the state the ability to pass any special rule and regulation for the benefit of women. Article 16 advances the Preamble's objective by providing equal job opportunities for everyone. However, the state has overlooked and dismissed the problem of male/transgender sexual victimization in institutions such as prisons and juvenile detention centers, causing the nature, dynamics, and impacts of male and transgender victimization to deteriorate. Male & transgender sexual victimization has been neglected and extensively criticized in contemporary intellectual and legal debates. Despite the fact that males are often viewed as sexual attackers, there have been an upsurge in male victims' interactions with the criminal justice system. When a perpetrator is in an area of power or control, a serious rape is a crime by Section 376 in the IPC. If the woman testifies that she did not agree in an aggravated rape case, Section 114A of the IEA of 1872, as modified, shifts the presumption to guilt. Again, it is incorrect to presume that persons in position of power can only control women and not other identities. We are aware that guys engaging in forcible sexual behavior with men is prohibited by Section 377 of the IPC because it breaches nature's order. The legislation Commission of India proposed for a gender-neutral rape legislation in its 172nd report. Others argue that this scenario also necessitates devotion to the fundamental principles of full equality above the law & equal defiance of the rights entrenched in our Constitution. One may argue that only gender-neutral rape legislation will ensure equal protection for all identities.

GENDER NEUTRALITY

Meaning: It emphasizes the equal rights of men, women, & people of any other gender without discrimination. Arvind Narrain (2013) discusses three characteristics of gender neutrality.

Without discrimination, regard for the victim's gender.

Maintaining neutrality towards the criminal.

Independence in times of war, strife, and community.

Gender neutrality refers to an approach or perspective that aims to eliminate or minimize gender distinctions, biases, and assumptions in various aspects of society, including language, policies, practices, and social interactions. It recognizes that gender is a social construct and seeks to create a more inclusive and equitable environment for individuals of all gender identities.

Key Aspect of General Neutrality: Here are some key aspects of gender neutrality:

Language: Gender-neutral language aims to avoid gender-specific terms or pronouns and instead uses words and expressions that do not assume or specify gender. This includes using gender-neutral pronouns like "they/them" or specific pronouns preferred by individuals. It also involves using gender-inclusive terms like "partner" instead of "husband" or "wife," or "parent" instead of "mother" or "father." The goal is to ensure that language does not reinforce traditional gender roles or exclude individuals based on their gender identity.

Clothing and Appearance: Gender-neutral approaches challenge the idea that certain clothing or appearance is exclusively for a specific gender. It promotes the freedom for individuals to express themselves through their style and appearance without societal constraints. This includes advocating for gender-neutral clothing options, breaking away from rigid gender stereotypes in fashion, and creating inclusive spaces that allow individuals to dress and present themselves and Awareness Gender neutrality in education involves challenging gender stereotypes, biases, and expectations. It encourages equal opportunities for all students, regardless of their gender, and promotes inclusive learning environments. This includes using teaching materials that showcase diverse gender identities and experiences, fostering discussions on gender equality, and addressing gender-based discrimination and harassment in schools.

Policies and Institutions: Gender-neutral policies and institutions work towards eliminating gender-based discrimination and ensuring equal treatment for individuals of all gender identities. This can involve implementing non-discriminatory hiring practices, establishing inclusive restrooms and facilities that cater to all genders, and creating policies that address gender pay gaps or gender-based violence.

Parenting and Child-rearing: Gender neutrality in parenting challenges traditional gender roles and expectations for parents. It involves promoting shared responsibilities between parents, encouraging children to explore diverse interests and activities irrespective of gender stereotypes, and avoiding assumptions about their preferences or abilities based on their gender.

Social Interactions: Gender-neutral approaches in social interactions aim to treat individuals based on their individuality rather than their gender. This includes avoiding gendered assumptions or expectations when interacting with others, using inclusive language and pronouns, and challenging gender norms that limit people's choices or opportunities based on their gender.

By embracing gender neutrality, society can work towards creating a more inclusive, equitable, and respectful environment that recognizes and respects the diverse experiences and identities of individuals, regardless of their gender. It acknowledges that gender is not a determining factor in an individual's abilities, interests, or worth, and promotes equal opportunities and treatment for all.

GENDER NEUTRALITY (IN RELATION TO PERPETRATOR)

Gender neutrality, in relation to perpetrators, involves treating individuals without assuming or assigning a specific gender when discussing or addressing their involvement in harmful or criminal actions. It emphasizes that individuals of any gender can be perpetrators of various forms of harm, abuse, or violence, and avoids perpetuating gender stereotypes or biases when discussing their actions.

Here are some aspects of gender neutrality in relation to perpetrators:

Language: Gender-neutral language is important when discussing perpetrators to avoid reinforcing stereotypes or assumptions based on gender. It involves using gender-neutral terms or specific descriptors without implying a specific gender. For example:

Instead of saying "he/she committed the crime," you can say "the individual committed the crime."

Instead of using gender-specific terms like "malefactor" or "wrongdoer," you can use neutral terms like "offender" or "perpetrator."

Equal Accountability: Gender-neutral perspectives promote equal accountability for all individuals, irrespective of their gender identity, when they engage in harmful or criminal behavior. It recognizes that gender should not be a determining factor in determining responsibility or consequences for actions.

Recognizing Diverse Perpetrator Identities: Gender neutrality acknowledges that perpetrators can come from diverse gender identities. It recognizes that individuals of all genders can engage in harmful actions and avoids assuming that only certain genders are capable of perpetrating harm. This approach challenges stereotypes and biases that might lead to unequal treatment or disbelief when the perpetrator's gender identity does not align with societal expectations.

Addressing Root Causes: Gender neutrality in addressing perpetrators also involves examining and addressing the underlying factors that contribute to harmful behavior. This includes

considering societal influences, power dynamics, socialization processes, and individual factors rather than solely focusing on gender as the primary determinant.

Preventive Measures: Gender-neutral approaches to addressing perpetrators emphasize the importance of preventive measures that address the root causes of harmful behavior. This can include education and awareness programs that challenge gender norms, promote healthy relationships, and provide tools for conflict resolution and emotional intelligence.

Support and Rehabilitation: Gender-neutral perspectives also recognize the need for support and rehabilitation programs for individuals who have engaged in harmful actions. It prioritizes providing resources, counseling, and interventions based on the needs of the individual, rather than assuming a specific path based on their gender.

CONCLUSION

By adopting a gender-neutral approach when discussing perpetrators, society can move towards a more equitable and just understanding of harmful behavior. It ensures that individuals of all genders are held accountable for their actions while challenging stereotypes and biases that may influence perceptions and responses to perpetrators based on their gender identity.

The question of whether or not a woman may commit a crime has long been debated. According to Susan Brownmiller, supporters of the motion asserted that it's biologically impossible for women to rape men, especially when in a patriarchal context. Those opposed to the proposal claimed once more that it was not physically possible. Women-on-women rapes became recognized in cases such as **State Govt v. Sheodayal (1956)**¹, in which the MP HC declared that a woman's modesty could have been offended by another woman under the jurisdiction of Section 354 of the IPC. In the important case of **Priya Patel vs State of M. P.**², the Supreme Court addressed the question of whether a woman may engage in gang rape.

By quoting Article 15, the Supreme Court ruled in **Yusuf Abdul Aziz v. State of Bombay**³ that women cannot be prosecuted with adultery under IPC provisions. The clause's existence Stereotypes based on gender, based on which women are solely victims and not perpetrators of sexual attacks, were not taken into account. In a subsequent case, **Anuj Garg v. Hotel**

¹1956 CrLJ 83 M.P

²AIR 2006 SC 2639

³1954 AIR 321, 1954 SCR 930

Association of India &Ors⁴, a bench of S.B. Sinha and Harjit S. Bedi J. ruled that gender stereotypes cannot be utilized as the foundation of the law, cannot bestow unequal advantages, and cannot burden any one gender.

As a result, a long-standing restriction that prohibited women from serving as bartenders for profit under Article 15(3) was removed.



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⁴Appeal (civil) 5657 of 2007