

# GENDER NEUTRALITY IN RAPE LAWS IN INDIA

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## ABSTRACT

Rape is an act of having a voluntary sexual act with another person without that person's consent or taking sexual pleasures from another person forcefully. It is considered as a heinous act that is immoral and illegal, makes the whole life of a victim horrible, and kills his soul. Rape is illegal in India and if any man does it, he will be punishable with the appropriate sections of the IPC related to rape.

Article 14 of the Indian constitution talks about equality and the pillars and provisions of various sections of the IPC talks about equal and fair treatment and makes discriminatory act void and unconstitutional. Though various articles of the constitution make the discriminatory act void the section 375 of the IPC, which talks about the offense of rape, is completely discriminatory and associated with the women only. This section is not only against the constitution but needs serious changes in it as our society is progressing and this section is creating chaos concerning biases towards women and is not gender-neutral.

This article will discuss section 375 of IPC, how this section is discriminatory and biased, and why it is required to make gender-neutral.

## INTRODUCTION

Rape is the fourth most heinous crime in India and the complaint regarding that is touching abnormal heights and is a burning issue and problem that we are facing right now. Rape is an act that is associated with women and section 375 of the IPC deals with the offense related to rape. Section 375 of IPC clearly states that rape can be committed by the man only and it can be committed against the women only. It is a mind-set of Indian laws that a man is the only person who can commit rape and a woman is the only person who can become the victim of it but have we ever thought vice-versa? Historically it was believed that rape can be committed against women only but with time it was seen that this heinous crime has happened with male victims as well. Man has also become the victim of this heinous crime but the cases never come out and almost every case goes unreported because either the victim fear telling the truth and by chance, if someone tries to report it then the section barred the victim to report his complaint. Actually, rape can be done with any person regardless of gender, caste, sex, sexual orientation

and it does happen a lot with men and also with trans person and homosexuals. The reports of it do not come out because there is no express section is given regarding that in the IPC which recognizes such complaints and thus creates a gap of law.

This type of rigid and gender bias law is inconsistent in India and they are creating a strong barrier in giving justice to those who faced it and can't report it because Indian law does not recognize that this offense can do with a male as well. Apart from rape with women, there are two broad categories of people with whom rapes are done. These are: -

- MALE RAPES
- RAPE WITH TRANSGENDERS OR HOMOSEXUALS

### MALE RAPES

Male rape is a situation where a male person commits a sexual act with the same gender without that person's consent. The study of male rape is started after 1980 and it has come to notice very late. Though we are living in the 21st century and people nowadays are having quite an open mind regarding the situation, but the still male person who is a victim of male rape does not come out. They still fear a lot because we have a patriarchal society and it is believed in today's society that a man can save himself from being a victim of male rape and reporting a crime of such a nature will raise a question on their potency and people also will start considering him homosexual because he got raped by a male.

A study conducted by The Centers for Disease Control and Prevention (US) found that 1 in 17 men reported were being forced to penetrate at some point in their lives and among these rape victims, around 86.5 percent reported that the perpetrators were male. Nearly 1 in every 38 men have either experience complete rape or an attempt for the same in their lifetime. A recent case happened in Mumbai where an RPF man was charged with the offense of sodomy as he raped the taxi driver because he refused to drop him.

These type of offenses shows that rape happens with male persons as well but it got unnoticed because our legal system does not have expressed written punishments for the same.

### RAPE WITH TRANSGENDERS OR HOMOSEXUALS

Transgenders are those people who do not fall in the category of male and female and they considered themselves as the third gender. Rape and sexual offenses related to the third gender are also very high in numbers but these people are also helpless because society does not

recognize their existence and when something like this happened to them then they are just left with no options because the rape section in IPC is just focused on females.

## RAPE LAW IN INDIA

According to section 375 of the Indian penal code, 1860

A man is said to commit “rape” if he—

1. penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; or
2. 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 do so with him or any other person; or
3. manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus, or any part of the body of such woman or makes her do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her 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, because 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.

This section of the IPC clearly states that a man is the only person who can commit rape and the rape is committable only against the women. The whole section revolves around the two words i.e. “male” and “female” which makes the section rigid and tunneled. This section is biased and is not gender-neutral at all. A gender-neutral section is in strong need so that this discrimination can be removed and justice can be served to the male and transgender victims as well.

## CONCLUSION

Rape is undoubtedly one of the most heinous crimes in the world and this crime is against all decency and moral behavior. this is a crime which does not only affect the victim but it affects the whole state. In the words of justice Krishnan Iyer in the case of Rafiq vs. the State of U.P. “A murderer kills the body, but a rapist kills the soul’.

Rape is the offense which is done to a person and that person could be of any gender, any age, any religion, rape is the crime against the person and not against the category of person. Therefore, we need gender-neutral laws in our legal system so that the best effect and justice can be given to the victims of those heinous crimes.

Around seventy-seven countries in the world have already adopted gender-neutral laws including the USA, UK, CANADA, DENMARK, AUSTRALIA, etc. in the united states, the definition of rape does not include women or girl, but the word “person” has been used in it and that’s where the gender-neutral and the law having wider scope was created. Many other countries have also adopted the gender-neutral law and it is high time for India to adopt the gender-neutral system as adoption will bring peace, harmony, and well-being to our society.