

From Paradox to Progress: Understanding Gender Discrepancies in Indian Sexual Assault Laws through International Perspective

Savin Mayur S¹, Chandana N²

^{1,2}M. Sc. Forensic science, Bangalore university, Bangalore, Karnataka, India

Abstract: *This paper explores the nuanced dynamics surrounding sexual assault legislation in India, acknowledging its significance within the broader context of international legal frameworks. We adopt a comparative approach to analyse the complexities of Indian sexual assault laws, aiming to elucidate inherent biases and discrepancies while maintaining a respectful understanding of the broader legal landscape. Through this lens, we delve into the historical, cultural, and legal factors that shape India's response to sexual assault cases, recognizing the evolving nature of these laws and their implications for survivors. By contextualizing our analysis within global perspectives, we seek to foster constructive dialogue and identify opportunities for progress and reform. Our aim is not to discredit Indian laws but to offer insights that contribute to the ongoing discourse on gender equity and justice. We advocate for inclusive policies that uphold the rights and dignity of all individuals, fostering a more equitable legal environment for survivors of sexual assault.*

Keywords: Sexual Assault, Legislation, Discrepancies

1. Introduction

Sexual assault laws serve as the cornerstone of justice systems globally, providing essential protections for survivors and establishing norms for societal conduct. In India, the ongoing evolution of sexual assault legislation reflects a commitment to addressing gender - based violence, yet it also underscores the complexities inherent in navigating cultural, legal, and social landscapes. As researchers committed to advancing gender equity and justice, our exploration of Indian sexual assault laws through international perspectives seeks not to denounce these laws but rather to offer a nuanced examination that illuminates areas for improvement and progress.

The title of our paper, "From Paradox to Progress: Understanding Gender Discrepancies in Indian Sexual Assault Laws through International Perspectives," encapsulates our approach to this multifaceted issue. We recognize the paradoxical nature of Indian sexual assault laws, where commendable advancements coexist with persistent challenges and disparities. Through our analysis, we aim to shed light on these complexities, providing insights that foster critical reflection and constructive dialogue.

Our perspective is one of advocacy for gender equality and justice, grounded in an appreciation for the complexities of legal systems and societal norms. We recognize the efforts of policymakers, activists, and legal professionals who have worked tirelessly to enact and enforce sexual assault laws in India. However, we also acknowledge the imperative of ongoing scrutiny and evaluation to ensure that these laws remain responsive to the evolving needs of survivors and aligned with international best practices.

In this introduction, we will provide an overview of the historical, cultural, and legal contexts shaping Indian sexual assault laws. We will explore key discrepancies and challenges within the current legal framework, drawing on comparative analyses with international jurisdictions to contextualize our findings. Our aim is to contribute to a more

nuanced understanding of sexual assault legislation in India, highlighting opportunities for progress and reform while acknowledging the complexities inherent in this ongoing endeavour. Through our research, we seek to support efforts to strengthen legal protections for survivors and advance gender equity within Indian society.

2. Methodology

The methodology employed in this research article predominantly utilizes the Doctrinal method, also known as the top - down approach, for analysing legal principles and frameworks regarding male/transgender rape. Additionally, the research integrates Descriptive and Analytical methods to present a comprehensive analysis of major aspects and lesser - known nuances of the subject. Furthermore, Diagnostic research method is utilized to propose potential solutions and recommendations. Explanatory and Exploratory methods are also incorporated to elucidate facts and circumstances while delving into lesser - known aspects within the societal discourse.

3. Statistics

In India, instances of male rape are relatively infrequent compared to those involving women, and research in this area is notably scant. The lack of comprehensive data and significant underreporting obscure the true scope of the problem. According to a survey conducted by the Centre for Civil Society, 16.1% of men reported being coerced into sex by a woman, while 2.1% experienced coercion from another man (S. G. Smith, 2017). In a country where male rape lacks legal recognition, victims often turn to social media to anonymously share their experiences. This underscores the pressing need to expand the definition of rape to include men and transgender individuals as victims, ensuring equitable protection and support for all survivors, regardless of gender.

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4. Laws

The legal framework governing rape cases in India has seen various shifts and debates over the years. Initially, Section 375 defined rape in a manner that only acknowledged men as perpetrators. However, discussions around gender neutrality gained traction following the Supreme Court's directive in the *Sakshi v Union of India* case in 2004. The Law Commission's 2000 report advocated for gender - neutral laws and an expanded definition of sexual assault. Subsequently, the Criminal Law (Amendment) Bill 2012 proposed sexual assault as a gender - neutral offense, marking a progressive step. The 2012 Delhi rape case further spurred reforms, with the Justice J. S. Verma committee recommending gender - neutrality for rape victims but retaining gender specificity for perpetrators. The Criminal Law (Amendment) Ordinance 2013 initially removed gender distinctions, but faced opposition from women activists, leading to the enactment of the Criminal Law (Amendment) Act 2013. This act reinstated gender specificity, which remains the current legal framework. Despite international norms advocating for gender neutrality in rape laws, concerns about stereotypes, myths, and potential consequences for women's status have hindered the adoption of gender - neutral laws in India

5. Discussion

In examining foreign laws and their approach to defining roles within cases of sexual assault, a notable difference emerges in the use of gender - neutral language compared to the Indian legal framework. While international standards often employ neutral terms such as "Person A" and "Person B" to denote the roles of victim and perpetrator, Indian laws typically delineate the perpetrator as male and the victim as female. This distinction, rooted in historical and cultural contexts, has implications for perceptions of gender equality within the legal system.

It is worth noting that the Indian Constitution draws upon legal principles and precedents from various countries, including Great Britain, the United States, and others. However, the direct translation of gendered language from these models into Indian law raises questions about its compatibility with contemporary understandings of gender equality and justice. By explicitly assigning gender roles in cases of sexual assault, the Indian legal framework may inadvertently reinforce gender stereotypes and perpetuate inequalities in the treatment of victims and perpetrators.

In light of this observation, there is a compelling argument for revisiting and potentially revising the language used in Indian sexual assault laws to align more closely with international standards of gender neutrality. Such a shift would not only reflect evolving notions of equality and human rights but also signal a commitment to addressing systemic biases within the legal system. By adopting gender - inclusive language, Indian laws could better accommodate diverse experiences of sexual violence and promote a more equitable approach to justice for all individuals, regardless of gender.

However, any proposed amendments must be approached with sensitivity to the cultural context and legal traditions of India. While the Indian Constitution may draw inspiration

from foreign models, it is essential to ensure that reforms are tailored to the specific needs and realities of Indian society. Moreover, efforts to promote gender equality within the legal system must be accompanied by broader societal initiatives aimed at challenging entrenched patriarchal norms and promoting respect for the rights and dignity of all individuals.

6. Conclusion

In conclusion, the discourse surrounding rape laws in India underscores the multifaceted nature of legal reform, societal attitudes, and gender dynamics. The trajectory of legislative changes, as delineated from the directive in the *Sakshi v Union of India* case in 2004 to the enactment of the Criminal Law (Amendment) Act 2013, reflects a continuous struggle to reconcile the imperative for gender neutrality with deeply ingrained societal norms. While acknowledging the reality of male and transgender rape victims, the prevailing resistance towards considering women as perpetrators of rape underscores the enduring influence of traditional gender roles and power dynamics within Indian society. The divergent views exemplified by the resistance from women activists against the Criminal Law (Amendment) Ordinance 2013 highlight the complexity of navigating societal expectations and legal principles. Moreover, in examining foreign laws and their approach to defining roles within cases of sexual assault, a notable difference emerges in the use of gender - neutral language compared to the Indian legal framework. While international standards often employ neutral terms such as "Person A" and "Person B" to denote the roles of victim and perpetrator, Indian laws typically delineate the perpetrator as male and the victim as female. This distinction, rooted in historical and cultural contexts, has implications for perceptions of gender equality within the legal system. The direct translation of gendered language from these models into Indian law raises questions about its compatibility with contemporary understandings of gender equality and justice. By explicitly assigning gender roles in cases of sexual assault, the Indian legal framework may inadvertently reinforce gender stereotypes and perpetuate inequalities in the treatment of victims and perpetrators. In light of these observations, there is a compelling argument for revisiting and potentially revising the language used in Indian sexual assault laws to align more closely with international standards of gender neutrality. Such a shift would not only reflect evolving notions of equality and human rights but also signal a commitment to addressing systemic biases within the legal system. By adopting gender - inclusive language, Indian laws could better accommodate diverse experiences of sexual violence and promote a more equitable approach to justice for all individuals, regardless of gender. However, any proposed amendments must be approached with sensitivity to the cultural context and legal traditions of India. While the Indian Constitution may draw inspiration from foreign models, it is essential to ensure that reforms are tailored to the specific needs and realities of Indian society. Moreover, efforts to promote gender equality within the legal system must be accompanied by broader societal initiatives aimed at challenging entrenched patriarchal norms and promoting respect for the rights and dignity of all individuals. This holistic approach is indispensable in effecting meaningful change within both the legal system and society at large.

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