

Silent Barriers: The Invisible Chains of Gender Bias

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ABSTRACT:

This article focuses on how Gender discrimination exists in certain sections of the Indian legal system and how it is to be combated in the near future. When most people hear the term “Gender Discrimination” they often tend to associate with the inequalities faced by women without paying heed to the possibility that even women have the potential to be adversary and not just men. Considerable sections of Chapter V of Bharatiya Nyaya Sanhita 2023 unintentionally favour or go against particular gender. Through this article we try to address and depict the aftermath of limiting the privileges or the punishment to a certain gender. The article does not intend to pinpoint the flaws in the legal system rather focuses on how certain offences have been mentioned to be stereotypically committed only by a man. The article revolves around breaking the glass ceiling and proves that both genders are equally capable of committing certain offenses against women. The readers get the opportunity to unmask the fact that the perpetrator cannot be limited to “Men” alone.

GENERAL OVERVIEW:

If we flip through the pages of history we get to read about the prejudices, atrocities and brutal adversities that women had to face, as time slipped through, feminists stood up for equality and managed to bring these issues to the limelight, now we live in a society where women have come far ahead from where they initially were. Yet, there lingers a small issue, people have recognized women’s capabilities in most aspects, but they have failed to observe that women can also play other roles and are not always “victims” to heinous crimes. Sexual violence is not just about men vs men, it's about one person harming another. When Women succeed and get away with such crimes, we portray to the world that this issue is less harmful, but that is not the case. Addressing this ensures that all offenders face the consequences of their actions, promoting justice for everyone. Women are also responsible for committing sexual offences, but such instances remain in the shadows and are not known to the public. Victimized women has become such a popular mindset because of which other possibilities became non-existent, this article tries to act as an eye opener to these possibilities.

Why did we choose to address this issue?

The world has its own share of problems, the law aims at smoothening out these rocky problems, a few of these include:

Gender bias

Rehabilitation and punishment

Fair Punishment and terms of imprisonment

By acknowledging the sexual crimes committed by women, we take a leap towards fair punishment, and bringing these to the forefront is the first step, there are cases where women have sexually assaulted other

individuals, yet if we read the sections in the BNS we observe that these sections has been constructed in a manner that gives an impression that only men are capable of committing sexual acts against women. But in reality, regardless of the gender anyone can commit sexual offences and anyone can be the victim of these offences.

Gender doesn't enjoy monopoly over the sexual offences. The position of perpetrators can be occupied by both the genders, the mental and physical trauma undergone by the victim is crippling regardless of who commits it. When most of us sit to watch the news, it is not very common to hear news regarding how women commit sexual offenses but it doesn't mean that it doesn't happen. A few reasons behind this remaining in the shadows could be the fact that many victims are ashamed to admit the fact that they were sexually assaulted by “women” due to the societal stigma and not being taken seriously and in such cases, men fear that their masculinity will be questioned and the other reason would be that victims especially men are not even aware that they are being sexually assaulted due to lack of comprehension of the sequence of events and due to the psychological maneuvers. To add on, many of the healthcare and support systems are unintentionally geared towards supporting females which often make the male victims hesitant to seek help or even report it.

In a nutshell, conveying this to the larger public will raise awareness about the full potential of sexual violence. It may never occur to people that women can be offenders, and helping people acknowledge these issues will convert this from an “overlooked problem” to a “solved problem”. A grasp on this issue can lead to more research, better policies and security for victims. It advocates for a more steady and precise public discussion about sexual offenses. It helps deconstruct false stereotypes and conventions.

CASES WHERE WOMEN HAVE COMMITTED SEXUAL OFFENCES:

The case of Priya Patel vs State of Madhya Pradesh deals with a major legal question that is whether a woman can be prosecuted for gang rape under Indian law. The facts of the case is that the victim while returning from a sports meet by Utkal express met Bhanu Pratap Patel (husband of the appellant) at the railway station where he informed the victim that her father had asked him to pick her up from the railway station. Trusting him, she went to his house where she was raped by him and Priya Patel (appellant) entered the house while the offence was taking place instead of helping the victim, she hit the victim. Bhanu Pratap Patel was charged with rape and Priya Patel was charged with gang rape. The main legal issue is whether Priya Patel can be charged with gang rape. High court of Madhya Pradesh held that a woman can be prosecuted under gang rape if she has facilitated the act of rape even if its not possible for her to commit rape. In this case, the Supreme court emphasized that under section 375 of IPC rape can be committed only by a man and section 376D specifies the punishment for gang rape and woman are not held guilty under this section as they cannot commit rape even though they had assisted in committing the offence of rape. Further in this case, the court explained the notion of common intention as coordinated activity, prearranged plans and participation in acts with the same intent. Since woman cannot commit rape, they cannot be held guilty under section 376D of IPC. Further the question of whether she could be charged for abetment was left open by the Supreme court as it is to be determined by the appropriate court.

If it was a male in the place of the female, he would have been charged under section 376D of IPC for gangrape but as she is a woman she was not charged under the section 376D.

In order to depict how widespread such issues are we will put forward a few cases from other countries. One such case is a case in Chicago where a woman was imprisoned after being accused for raping a man at gunpoint and forcing him to have sex with another woman in the back of the vehicle. The accused is a

woman named Cierra Ross, a 25-year old resident of suburb Olympia fields. The Chicago judge received information from the assistant state's attorney Amanda Pilsbury. The incident is alleged to have begun around 5 am on the morning of July 26 when she offered the victim a car ride, after he got into the car, she pulled out a gun and forced him to get into the backseat of the car and have sexual intercourse with her friend. The man managed to escape wearing only his shirt and he subsequently alerted a nearby cab, according to Chicago Sun times the cab driver gave the victim an opportunity to email himself a picture of Cierra's license plate. Cierra is considered to be a mother of 2, who works at a local Denny's restaurant and there has been record of previous misdemeanor in the form of conviction for prostitution. The court set her bail at \$75,000.

Another illustration of case where a woman was responsible for sexual assault will be depicted as follows: Mary Kay Letourneau's infamous affair with her student Vili Fualaau made headlines in the 90s.

Mary became infamous when her affair with Vili became known to the public, at that point of time Vili was merely a sixth grade student. Mary entered a guilty plea in 1997 to two counts of felony second degree of rape of the child and served 3 months in jail. Despite the jail term, she still continued her affair with Vili due to this she was subjected to 6 years of jail time.

This case helps us observe how foreign countries punish women sexual offenders even though the male has given consent. The case considered the age of the male victim to be relevant and gave stringent punishment after the accused tried to make contact with the victim. Our nation has taken inspiration from foreign countries for many aspects and we should strive to do the same for sexual offenses especially when the perpetrator is a woman.

Even in the POCSO (Protection of Children from Sexual offenses) Act, 2012, gender neutral language is used which is applicable to perpetrators belonging to any gender. Under this act, a woman can be charged for sexual assault including penetrative and non penetrative sexual assaults especially if the victim is a minor.

WHY LAW SHOULD ADDRESS BOTH THE GENDERS:

- 1. Law = Equality:** Article 14 states that all people should be treated equally in the eyes of law. An imbalance will be created if it is presumed that a single gender is capable of committing a sexual offense. When women are objectified only as victims and not as possible offenders, the legal system turns a blind eye to the fact that even a woman can commit a sexual offense. Subsequently, it will create a stack of cases where all the possibilities have not been considered and leads to injustice.
- 2. An umbrella of protection for all victims:** The legal system should be fair and include all victims within its ambit regardless of who commits the crime. The law should create provisions that deal with instances where a woman commits sexual offense against a man or another woman. We must be well aware of the emotional and psychological trauma caused by the sexual offender nevertheless which gender they belong to. Hence, laws must be constructed in such a manner as to impart justice to any victim of sexual violence whether the offender is male or female.
- 3. Considering power dynamics:** Power and control could also play a key role in sexual offences. In many instances, we observe that the perpetrators are generally people who have authority and power over the victims such as bosses at work, caretakers, teachers, team leaders, or managers, use their power with malice to commit acts which amount to sexual abuse. Positions of power can be occupied by anyone irrespective of their gender and they should be held liable for their actions. For example, a female employee may be sexually harassed by her female boss or a woman may take advantage of

another woman's vulnerability merely with the power of authority she holds. Addressing these kinds of situations needs effective planning and proper guidelines ensured by the law.

4. **Erasing gender lines:** It is crucial to wipe away any gender bias which exist in criminal law. It is only when laws are unbiased that they succeed in providing full protection to individuals. For instance, there is a general propensity to view men as inherently aggressive and women as demure, but that is not always the case. Physical strength or gender are not the key notations of sexual violence. It actually revolves around power and monopoly.
5. **Getting accustomed to societal change:** There has been a significant evolution in the views on gender. People have been giving recognition to non-binary, transgender and gender fluid individuals. There must be an element of inclusivity when it comes to sexual offense laws in order to ensure that gender identities enjoy relevance and are reflective of contemporary society. Such people are often less likely to report sexual offenses due to existing conventions or the thought that the legal framework will not support them. Laws that are inclusive help in eliminating barriers to reporting.
6. **Redressal of victims:** Counselling and victim services can be considered to be support systems which should utilize gender neutral laws that cater to the needs of a galaxy of survivors. Access to resources and specific needs should be something that every victim should have.

BNS PROVISIONS THAT ARE GENDER SPECIFIC:

The way a person perceives or interprets a section depends on how the section is phrased.

Bharatiya Nyaya Sanhita, 2023 often uses gendered language in the sections that focuses on offences like assault, rape and provisions that deal with other sexual offences.

For example,

- Section 63 states that “A man is said to commit rape”, at first glance this maybe perceived as a crime that only a specific gender is capable to commit rape.
- Section 75(1) states that A man committing any of the following acts:
 1. Physical contact and advances involving unwelcome and explicit sexual overtures; or
 2. A demand or request for sexual favours; or
 3. Showing pornography against the will of a woman; or
 4. Making sexually coloured remarks.
- Section 78 states Any man who—
 1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman;
 2. monitors the use by a woman of the internet, e-mail or any other form of electronic communication, commits the offence of stalking.
- Section 81 states that Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Paraphrasing these terms in a different way will help broaden the scope of applicability of the law to both genders.

GOING FORWARD: FORMING NEW LAWS

Addressing both genders - A possible way to increase the inclusivity in laws is to use gender neutral langu-

age rather than using the phrase “he”. Lawmakers can replace the latter term with terms like the “offender” or the “perpetrator”. This will ensure that law is applicable to everyone regardless of their gender.

Raising awareness through education - Law enforcement officers such as judges and lawyers must be given guidance to adapt to the mindset that both men and women are equally capable of committing sexual offenses. This can assist in minimizing stereotypes and ensure that no case goes unheard.

CONCLUSION

In a nutshell, we make valuable insights when it comes to gender distinction in terms of sexual offenses and it helps open up the narrow views regarding, “who is” and “who isn't” capable of committing sexual offenses. The chains of stereotype and prejudice tend to hold people back from truly identifying the root cause of problems and miseries. How can these issues be resolved? What is the aspect that the society failed to notice? Our article tries to capture the essence of the solution to the above mentioned questions. As the famous quote goes, it takes a drop of water to form an ocean, similarly unless people of the society accept that the perpetrator could be a person belonging to any gender, we can't expect any form of change. All victims to such heinous crimes deserve justice and justice cannot be served at its best if the Indian legal framework chooses to consider women to only be “victims”. Hence it is imperative to include modifications in order to reduce the existing crime rates, even if the impact is minimal it is undeniably necessary for a better environment and in the long run, “a better world”. The process towards solving a problem includes 3 major steps, no. 1 identifying the problem, no. 2 accepting the issue and identifying mechanisms and finally no. 3 solving the problem itself. This article has managed to accomplish step no.1. We look forward and put our hopes on our reliable legal system, in order to achieve progress and prosperity.

REFERENCES:

1. <https://lawbhoomi.com/priya-patel-v-state-of-madhya-pradesh>
2. <https://timesofindia.indiatimes.com/>
3. <https://www.thehindu.com>
4. Bharatiya Nyaya Sanhita, 2023 bare act.