

Transgender people tell us why India's newly proposed rape laws are discriminatory

The fact that punishment for rape against cis-gendered women is more than seven years, but for the trans community, it ranges from six months to two years, has led to the #RapeIsRape campaign.

By Pallavi Pundir

Vice (11.09.2019) – <https://bit.ly/2moIoTp> – In 2017, as part of a nation-wide survey, an anonymous transwoman recalled going to the doctor right after being gang-raped. She didn't get the dose of Post-Exposure Prophylaxis (an emergency HIV medicine to be taken within 72 hours of sexual violence). Instead, she encountered one searingly invalidating question from the doctor: "How can you be raped?" The woman was a part of a study that exposed extreme transphobia among the medical community, and a complete disregard for the violence meted out to the transgender community in India. But even though there's no big data on the enormity of sexual violence the community faces in India at the moment, or the impunity with which they're dealt with, it's safe to say that the doctors aren't the only erring ones.

Transgender people—an umbrella term for those whose sense of gender doesn't sync with the gender assigned to them at birth, with some 4,900,000 of them in India (according to the latest census in 2011)—often face sexual violence in more frequency

than can be evidenced. In an interview with South China Morning Post, Salma Khan of Mumbai-based NGO Kinnar Maa Trust, which supports 5,000 transgender people in India, said that at least one in four of the people registered with them has been a victim of rape, gang-rape or other sexual violence.

So, on August 5, when the Transgender Persons (Protection of Rights) Bill was passed by the Lok Sabha (it's yet to be passed by the Upper House to become the law of the land), despite a large wave of protests since the bill was first introduced in 2014, there was great uproar again. Out of the many flaws of the bill was this glaring one: violence, abuse, and rape against transgender people can be punishable with jail time from six months to two years, and a fine. Compare that with the punishment for rape of cis-gendered women, which can give the offender from seven years of jail time to even life sentence—and you can see how unfair the proposed law reads.

In response to this, transgender people in India have begun a campaign with the hashtag #RapeIsRape, a response that simply states that rape is degrading to all. The movement, which started on August 15, is a part of years and years of struggle by the community to be visible, acknowledged and treated equally in a homophobic and transphobic society. (The transgender community in India got recognised as the third gender only in 2014.)

“Rape is the fourth most common crime committed against women. Trans women are women, whereas trans men are forced to experience femininity by the patriarchal society we live in,” says Neysara, a Netherlands-based trans person of Indian origin, who is documenting this online campaign, and runs

Transgender India, an organisation for transgenders in India. VICE reached out to a few members of the community to find out why the bill causes more harm than good:

“This increases the chances of us getting targeted even more.”

Now that the bill has been passed, this is the reality we have to live with. The main problem in the bill is that of harassment. If a trans woman is abused and harassed, the strictest punishment is that of two years and a fine of Rs 10,000 (approximately 128 EUR). If a woman gets raped, the minimum penalty is much more. This increases the chances of us getting targeted even more. We feel that we're second class citizens who have no value like a regular person. If the government wants to make the bill more inclusive, then make it all-inclusive, and not conditional. – Shakti, 25

“It's a clear way of telling us that we're less than women, or sub-human in the country”

The law calls itself a transgender person's protection bill, but, especially in the crimes committed against the community, instead of making it more severe, it dilutes the punishments for offences against the trans community. One such offence that is very gendered is rape. In a country where rape of cis gendered women ranges from seven years to life, it's a clear way of telling us that we're less than women, or sub-human in the country. It's legally writing in the constitution that we're not legally human. – Neysara, 36

“In the eyes of the family, trans men are women who need to be fixed”

The trans community is prone to physical and verbal abuse, even if you compare it with women in India today. Why would you not value the life of the trans community the way you value everyone else's? If you rape, you're taking the dignity of the person. It doesn't matter if the identity of the person is a male, female or trans person. Physical and emotional trauma is the same for everyone. Among a lot of trans people, especially trans men, a lot of corrective rape takes place from the family. In the eyes of the family, those are women who need to be fixed. This is an invisible violence that happens on a very regular basis. Often, there's inappropriate touching and if you say anything, the abuser says, 'Oh, I thought you're a male'. This bill is going to aggravate these kind of situations even more. Article 14 of the Constitution says that all humans have equal rights, but this doesn't look like it, no? – Vinod, 30

“I do feel the bill is one step forward”

There's no equality in this bill. Rape is rape, be it with cis-women or trans women. However, I do feel the bill is one step forward. It shows that there is some development and we're working towards more. Earlier, even this provision wasn't there, and having something is better than nothing. The only thing discriminatory here is that it impedes our fundamental right to equality, which is our prerogative irrespective of our gender, caste, sex and so on. – Nia, 42

“So must crimes against us be seen as petty crimes?”

There should be a punishment for at least three to five years. If you look at the LGBTQ community, they suffer, almost every day, with some kind of violence or the other. So must crimes

against us be seen as petty crimes? This will only push us further to the margins. – Ibra, 25