

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 5

2026

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Beyond the Female Victim: Legal Voids in Recognizing Male and Transgender Survivors of Sexual Violence

VISHAL ANAND*  AND PROF. (DR.) YOGENDRA KUMAR VERMA**

ABSTRACT

The recent paradigm shift in India's criminal jurisprudence to the Bharatiya Nyaya Sanhita, 2023 marks a watershed moment in the history of human rights in India. However, it also brings to the fore the glaring lacuna created by the absence of gender-neutral laws on the crime of rape. This paper critically analyzes the failure of the Indian legal system to provide substantive legal protection to male and transgender victims of sexual assault. Aligning itself with the conference sub-theme of 'Vulnerable and Marginalised Groups,' the paper explores the manner in which the existing legal framework has created a narrow definition of victimhood based on the gender of the victim. Male victims of sexual assault have been largely ignored in the primary legislation on sexual assault, while the Transgender Persons (Protection of Rights) Act, 2019 has been found to provide a much lower level of legal protection to the transgender community. The paper contends that such a rigid, gender-based definition violates the constitutional guarantee of equality and equal protection under Articles 14 and 15 of the Indian Constitution. Using a human rights-based approach, it juxtaposes Indian case law with the international human rights principles enunciated in the Yogyakarta Principles and the Universal Declaration of Human Rights. The paper finds that the time has come to replace the gender-specific definitions in the laws on rape with gender-neutral definitions. By recognizing the bodily autonomy of male and transgender victims, the Indian legal system will place itself in a position to fulfill its mandate in the field of human rights.

Keywords: Bodily Autonomy, Equal Protection, Gender Neutrality, Sexual Violence, Transgender Rights

I. INTRODUCTION

The development of criminal jurisprudence in India has recently undergone an unprecedented and heavily scrutinized paradigm shift with the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the colonial-era Indian Penal Code, 1860 (IPC). Although this major

* Author is a Research Scholar at University Department of Law, Patna University, Patna, Bihar, India. ORCID: <https://orcid.org/0009-0007-8793-5341>

** Author is the Research Supervisor and Principal at Patna Law College, Patna University, Patna, Bihar, India.

legislative transformation was presented as a move towards the decolonization, modernization and Indianization of criminal jurisprudence, it has also exposed a deeply troubling legal vacuum: the continued absence of gender-neutral provisions on sexual violence. The provisions on rape continue to define victimization and victimhood entirely through the lens of cisgender women. The effect is that the Indian criminal justice system maintains a hierarchy of victimization that systematically marginalizes male and transgender victims.¹

In reality, sexual violence is not the manifestation of perverted sexual desire; it is the exercise of power, dominance and subjugation in its most profound form. When the State categorically declares rape to be an act committed by a man against a woman, it works with a simplistic paradigm that cannot grasp the reality of power imbalances across different gender identities. This paper addresses that pressing human rights issue in the current Indian legal scenario. It argues that the gender-specific definitions of rape, under the Indian Penal Code and now under the BNS, violate the fundamental rights guaranteed to citizens by the Indian Constitution.

The purpose of the research is to critically examine the provisions of the BNS alongside the Transgender Persons (Protection of Rights) Act, 2019 and international human rights standards. The methodology adopted is that of analytical jurisprudence applied to human rights. The paper first traces the historical background of the Indian law on rape; it then examines the opportunity missed in the BNS; it then examines the specific statutory provisions that are problematic for transgender persons; it then examines the tension between constitutional morality and protective discrimination under the Indian Constitution; and finally it examines the position in international human rights law.

A. Statement of the research problem

The primary research problem is the legislative exclusion and marginalization of male and transgender victims of sexual violence in India. The primary legislation on rape (formerly Section 375 IPC and now Section 63 BNS) prescribes a narrow definition of rape as an act committed by a male perpetrator on a female victim. This has left a critical legislative gap for non-female victims and raises important questions of constitutional morality.

B. Literature review

1. Theme 1: The Historical and Patriarchal Roots of Rape Laws: a historical account of the genesis of gender-specific rape laws in India, focusing on protective measures and the conceptualization of women as a vulnerable section of society.

¹ The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023), § 63.

2. Theme 2: The Justice J.S. Verma Committee Report (2013): a critical analysis of the Committee's recommendation on gender-neutral rape laws and the subsequent critique by feminist legal theorists.
3. Theme 3: The Rights of Transgender Persons: a review of the literature surrounding the judgment in *National Legal Services Authority v. Union of India* and a critique of the Transgender Persons (Protection of Rights) Act, 2019, focusing on the inadequacy of Section 18 with regard to sexual abuse.
4. Theme 4: International Perspectives on Gender Neutrality: an examination of how jurisdictions such as the United Kingdom and Canada, and international frameworks such as the Yogyakarta Principles, have navigated the shift towards gender-neutral or victim-neutral sexual offence laws.

C. Identification of the research gap

While there is substantial literature debating the theory of gender neutrality against feminist jurisprudence, there is a distinct lack of empirical and doctrinal analysis of the immediate aftermath of the Bharatiya Nyaya Sanhita, 2023. Furthermore, legal scholarship frequently groups "male and transgender" victims together under the umbrella of "gender neutrality." A critical gap exists in analyzing separately the distinct hurdles faced by transgender persons (for whom the law is inadequate) and by cisgender men (for whom it is virtually absent) in cases of adult sexual assault.

D. Hypotheses

1. H1: The gender-specific definition of rape under the Bharatiya Nyaya Sanhita, 2023 violates the fundamental rights to equality (Article 14), non-discrimination (Article 15), and life and personal liberty (Article 21) of male and transgender citizens.
2. H2: A victim-neutral legal framework for sexual offenses in India will enhance the human rights of marginalized genders without inherently diminishing the legal protection required for cisgender women.

E. Research objectives

1. To critically examine the provisions of the Bharatiya Nyaya Sanhita, 2023 and the Transgender Persons (Protection of Rights) Act, 2019 concerning sexual violence against non-female victims.
2. To analyze the constitutional validity of gender-specific rape laws in light of evolving constitutional morality and the *NALSA* judgment.

3. To assess the socio-legal impact of unrecognized victimhood on male and transgender survivors (for example, the lack of medical protocols, underreporting and stigma).
4. To propose a balanced legislative framework that incorporates gender-neutral language while addressing the specific vulnerabilities of all genders.

F. Scope and limitations

1. Scope: The research is confined to the substantive criminal law governing non-consensual sexual intercourse and assault among adults in India. It focuses on the newly enacted BNS and on constitutional jurisprudence.
2. Limitations: The paper does not extensively cover child sexual abuse, as the Protection of Children from Sexual Offences (POCSO) Act, 2012 already operates on a gender-neutral framework.² Further, while the paper advocates gender-neutral laws, it does not enter the separate and complex debate on marital rape, in order to maintain a focused analysis of victim identity.

G. Research methodology

The study employs a doctrinal and analytical research methodology.

1. Primary Sources: a critical analysis of the Constitution of India, the Bharatiya Nyaya Sanhita, 2023, the Transgender Persons (Protection of Rights) Act, 2019, and landmark Supreme Court judgments (for example, *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India*).
2. Secondary Sources: Law Commission reports, the Justice Verma Committee Report, international instruments (the UDHR and the ICCPR), peer-reviewed journal articles and academic books, used to substantiate the arguments and to provide comparative perspectives.

II. THE HISTORICAL AND PATRIARCHAL BASIS OF RAPE LAWS

To understand the present legal void, it is necessary to analyze the philosophical foundation of the existing law. The Indian Penal Code was drafted in the 1830s by the First Law Commission under Thomas Babington Macaulay and enacted in 1860, and it was necessarily informed by the morality of the Victorian age. Section 375 of the IPC defined rape as an offense committed by a man against a woman.³ This conceptualization was not born of a modern human rights

² The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012), §§ 2(1)(d), 3.

³ The Indian Penal Code, No. 45 of 1860, INDIA CODE (1860), § 375.

framework protecting bodily autonomy; it was deeply rooted in patriarchal notions of female purity and chastity.

Under the Victorian system of law, which heavily influenced the Anglo-Indian legal system, women were treated as being under coverture, or as the property of their husbands or fathers. Rape was accordingly seen not as a crime against the individual woman as such, but as a crime against the honor of her family. Men, who could not be the property of another in the way women were, could not be victims of rape in the way women could.

With the development of Indian jurisprudence after independence, the law came to be administered through a “protectionist” jurisprudence: women were perceived as a uniquely vulnerable class in need of paternalistic protection by the State. The trajectory of rape law reform in India has consistently emphasized this binary. For example, the extensive changes introduced by the Criminal Law (Amendment) Act, 1983, prompted by public outrage at the Supreme Court’s acquittal of the police constables in the notorious Mathura rape case (*Tukaram v. State of Maharashtra*),⁴ focused largely on more stringent rules of evidence and procedure to protect female victims, particularly of custodial rape. Although this protective framework was, and arguably still is, essential in countering the deeply ingrained socio-cultural reality of patriarchal violence against women in India, it inadvertently created a large blind spot in the law.

This protectionist policy rested on the fallacy that only women can be victims of serious sexual violence and only men can commit it. Sexual violence against adult men, or committed by women against men or women, thus became legally invisible. The law’s inability to recognize male victimhood is rooted in stereotypes of toxic masculinity: that men are inherently strong and dominant and cannot be coerced or overpowered. By retaining the colonial-era definition of rape, Indian law perpetuates these harmful gender stereotypes and denies justice to those who do not fit the traditional concept of the “ideal victim.”

III. THE BHARATIYA NYAYA SANHITA, 2023: A MISSED OPPORTUNITY

The debate on the need for gender-neutral rape laws in India is not new, but it gained significant traction after the Delhi gang rape of December 2012. In its aftermath, the Government of India constituted the Justice J.S. Verma Committee to recommend amendments to the criminal law. The Committee’s report, submitted in January 2013, was in many respects revolutionary. Observing that “the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality,” the Committee recommended that the law on rape be made

⁴ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India).

gender-neutral as regards the victim.⁵ It did not, however, recommend replacing “rape” with “sexual assault.” It considered it important in the Indian context to retain a separate offense of rape, redefined to cover all forms of non-consensual penetration of “a person,” while the perpetrator remained “a man.”⁶

These recommendations were ultimately not adopted in the Criminal Law (Amendment) Act, 2013. The retention of a gender-specific definition was heavily influenced by pushback from feminist legal scholars and women’s rights groups, whose opposition rested on the socio-economic conditions of Indian society. In a highly patriarchal society, they argued, women already face numerous hurdles in reporting rape, and a gender-neutral law could be misused by perpetrators to file counter-complaints of rape against their victims. Although this rationale is understandable from a pragmatic perspective, it sacrifices the basic human rights of male and transgender victims at the altar of women’s rights.

A decade later, the enactment of the BNS in 2023 presented a historic, once-in-a-generation opportunity to correct this anomaly and modernize the law. Instead, the legislature opted for the status quo. Section 63 of the BNS mirrors the old Section 375 of the IPC and defines rape exclusively in terms of acts committed by a “man” against a “woman.”⁷ The wording expressly requires the victim to be female, closing the primary sexual assault provision to victims of any other gender.

Furthermore, the transition from the IPC to the BNS has created a new and arguably more severe problem by omitting any equivalent of Section 377 of the IPC (unnatural offenses). Section 377 criminalized “carnal intercourse against the order of nature.” While the Supreme Court of India in the landmark case of *Navtej Singh Johar v. Union of India* rightly read down Section 377 to decriminalize consensual sexual acts between adults, including same-sex acts, the provision continued to apply to non-consensual acts, to acts involving minors and to bestiality.⁸ Despite its archaic and highly stigmatizing language, Section 377 was the only statutory recourse for non-consensual sexual assault (including penetrative violence) against adult men.

By omitting Section 377 from the BNS without simultaneously introducing a gender-neutral rape provision or a specific provision for male victims, the legislature has left a legal vacuum. An adult man subjected to serious non-consensual penetrative sexual violence today has practically no specific penal provision under the BNS through which he can seek justice

⁵ JUSTICE J.S. VERMA, JUSTICE LEILA SETH & GOPAL SUBRAMANIAM, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 416 (2013), <https://hdl.handle.net/2451/33614>.

⁶ Verma, Seth & Subramaniam, *supra* note 5, at 111, 439.

⁷ Bharatiya Nyaya Sanhita § 63.

⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

commensurate with the gravity of the crime. The remaining recourse lies in generic provisions such as those on “hurt” or “wrongful confinement,” which fail to capture the sexual nature of the offense and the psychological trauma it causes. This omission represents a serious failure of the legislative drafting process to anticipate the needs of male victims.

IV. THE PLIGHT OF TRANSGENDER SURVIVORS: STATUTORY INADEQUACIES

While the position of male victims under the BNS is one of complete legal vacuum, the position of transgender victims of sexual violence is one of serious statutory inadequacy and a troubling hierarchy of victimhood. The Supreme Court’s landmark judgment in *National Legal Services Authority v. Union of India (NALSA)* powerfully affirmed that the “third gender” is entitled to the full range of fundamental rights in Part III of the Constitution, including the right to live with dignity and to the equal protection of the laws.⁹ However, this constitutional recognition has not translated into substantive and equitable protection under the criminal law.

Because Section 63 of the BNS relies on the strict binary of “man” and “woman,” transgender persons, in particular trans men, non-binary persons and trans women who have not legally or surgically transitioned to the State’s satisfaction, are frequently excluded from the primary statutory framework on rape. When the police refuse to register a First Information Report (FIR) under Section 63 for a transgender victim, the victim’s legal recourse for serious sexual abuse is relegated to the much-criticized Transgender Persons (Protection of Rights) Act, 2019.

The disparities between the BNS and the Transgender Persons Act are stark. Section 18(d) of that Act penalizes whoever “harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.”¹⁰ The punishment prescribed is imprisonment for a term “which shall not be less than six months but which may extend to two years and with fine.”¹¹

This framework creates a glaring disparity which, it is argued, offends the very conscience of justice and the Constitution. If a cisgender woman is raped, the minimum sentence under Section 64 of the BNS is ten years’ rigorous imprisonment, which may extend to imprisonment for life.¹² If a transgender person suffers the same physical trauma, the same invasion of bodily

⁹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).

¹⁰ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, INDIA CODE (2019), § 18(d), *as amended by* The Transgender Persons (Protection of Rights) Amendment Act, No. 3 of 2026, INDIA CODE (2026), § 7 (substituting § 18 and re-enacting clause (d) in identical terms, with the same penalty).

¹¹ *Id.*

¹² Bharatiya Nyaya Sanhita § 64.

autonomy and the same mental devastation, the perpetrator can receive a maximum sentence of only two years under the very legislation intended to “protect” the transgender community.

Whatever the legislative intent, the result is the institutionalization of a severe hierarchy of victims. Through the penalty it prescribes, the legislation suggests that the bodily integrity, dignity and trauma of a transgender person are worth far less than those of a cisgender woman. Moreover, the criminal justice system lacks the basic infrastructure to deal with transgender victims. There is no standardized medical procedure or “rape kit” for transgender bodies, which exposes victims to humiliation during medical examination. The system’s failure to offer equal penal remedies amounts to granting perpetrators of crimes against the transgender community a degree of impunity, adding to the community’s already severe socio-economic marginalization.

V. CONSTITUTIONAL MORALITY VS. PROTECTIVE DISCRIMINATION

The retention of gender-specific rape laws places the substantive criminal law in direct conflict with the evolving notion of constitutional morality. Article 14 of the Constitution of India guarantees equality before the law and the equal protection of the laws within the territory of India.¹³ Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex or place of birth.¹⁴ Article 21 protects the fundamental right to life and personal liberty, which the Supreme Court has construed to include the right to live with dignity, the right to privacy and the right to bodily autonomy.¹⁵

The common argument advanced by the State for its gender-based approach to rape legislation rests on Article 15(3) of the Constitution, which permits special provisions for women and children.¹⁶ The courts have interpreted this clause to uphold laws that protect only women, using the doctrine of “intelligible differentia” to support the argument that women form a vulnerable group in need of special protection.

However, the critical constitutional question is not whether the State can protect women, but whether it can do so by expressly excluding others. Does the constitutional mandate to make special provisions for women justify the total denial of legal remedies to male and transgender victims of identical violence? The doctrine of protective discrimination is designed as a sword to uplift marginalized groups and dismantle structural inequality; it was never intended to be a shield behind which the State may deny basic human rights to other vulnerable groups.

¹³ INDIA CONST. art. 14.

¹⁴ INDIA CONST. art. 15(1).

¹⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

¹⁶ INDIA CONST. art. 15(3).

In *Navtej Singh Johar*, the Supreme Court emphasized the supremacy of “constitutional morality” over majoritarian or societal morality. The Court observed that the law must recognize and protect the rights of sexual minorities, and that historical discrimination cannot justify present inequality.¹⁷ Similarly, in *Joseph Shine v. Union of India*, striking down the adultery provision (Section 497 IPC), the Supreme Court held that laws which treat women as the property of men or rest on Victorian gender stereotypes are manifestly arbitrary and violate Article 14.¹⁸

The current statutory regime for sexual offenses rests on the same outdated and arbitrary gender stereotypes. It assumes that men cannot be victims and that women cannot be perpetrators. By denying equal penal protection solely on the basis of the gender identity or biological sex of the victim, the current framework fails the twin test under Article 14: the classification (the gender of the victim) has no rational nexus with the object sought to be achieved (punishing sexual violence and protecting bodily autonomy). It also violates the dignity guaranteed by Article 21, and it requires the Indian legal system to reckon with its failure to protect all its citizens equally.

VI. INTERNATIONAL PERSPECTIVES AND HUMAN RIGHTS FRAMEWORKS

From an international and comparative perspective, the Indian legal framework lags well behind evolving global human rights standards. International human rights law increasingly recognizes that gender-based violence, including sexual assault, is not confined to women, and it has moved towards a gender-neutral approach.

The Universal Declaration of Human Rights (UDHR), which India voted to adopt in 1948, sets out a foundational principle in Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law.”¹⁹ The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, reinforces this principle in Articles 2 and 26, which require States to secure equal protection without discrimination on grounds including sex.²⁰ The denial of commensurate penal protection to male and transgender survivors of sexual assault in India is difficult to reconcile with these principles, which the ICCPR makes binding on India.

Furthermore, the Yogyakarta Principles, which apply international human rights law in relation to sexual orientation and gender identity, provide explicit guidance. Principle 5 affirms that everyone, regardless of sexual orientation or gender identity, has the right to security of the

¹⁷ *Navtej Singh Johar*, *supra* note 8, at 122.

¹⁸ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

¹⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 7 (Dec. 10, 1948).

²⁰ International Covenant on Civil and Political Rights arts. 2(1), 26, Dec. 16, 1966, 999 U.N.T.S. 171.

person and to protection by the State against violence or bodily harm. It requires States to take all necessary legislative measures to impose appropriate criminal penalties for violence based on sexual orientation or gender identity, and to ensure that such violence is vigorously investigated and prosecuted and that victims receive appropriate remedies.²¹

Many jurisdictions have made this transition, showing that recognizing male and transgender victims does not harm women's rights. The United Kingdom, for instance, transformed its approach through the Sexual Offences Act 2003. Section 1 of the Act defines rape so that the victim can be of any gender, focusing on the absence of consent and the act of penile penetration, with other forms of penetration covered by "assault by penetration" under Section 2.²² This shift acknowledged that the harm of non-consensual sexual acts is universal.

Similarly, Canada overhauled its Criminal Code in the early 1980s, removing the gender-specific offense of "rape" entirely and replacing it with the gender-neutral offense of "sexual assault" (now Section 271 of the Criminal Code).²³ This approach focuses on the violation of the individual's sexual integrity, regardless of gender identity or the anatomical nature of the assault. Even in the United States, the Federal Bureau of Investigation in 2012 replaced the definition of rape used in its Uniform Crime Reporting program, which dated from 1927 and was more than eighty years old, with a gender-neutral definition: "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."²⁴ India's continued reluctance to adopt victim-neutral language sets it apart from the growing global consensus on human rights, bodily autonomy and criminal justice.

VII. CONCLUSION AND THE WAY FORWARD

The changeover from the Indian Penal Code to the Bharatiya Nyaya Sanhita, 2023 has been widely presented as a move towards modernization. However, by retaining the colonial-era gender binary in sexual offenses while omitting Section 377 without any corresponding provision, it represents a significant failure on the part of the legislature to align Indian criminal

²¹ INTERNATIONAL COMMISSION OF JURISTS, *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* princ. 5 (2007), <https://yogyakartaprinciples.org/principle-5/>.

²² Sexual Offences Act 2003, c. 42, §§ 1–2 (U.K.).

²³ Criminal Code, R.S.C. 1985, c. C-46, § 271 (Can.).

²⁴ Press Release, FEDERAL BUREAU OF INVESTIGATION, *Attorney General Eric Holder Announces Revisions to the Uniform Crime Report's Definition of Rape* (Jan. 6, 2012), <https://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape>; see also *Justice Department Announces Major Step Forward to Combat Rape*, THE WHITE HOUSE BLOG (Jan. 6, 2012), <https://obamawhitehouse.archives.gov/blog/2012/01/06/justice-department-announces-major-step-forward-combat-rape> (noting that the definition had not been revised since 1927).

justice with the evolving constitutional ethos. The current framework rests on a scientifically inaccurate and sociologically outdated understanding of sexual crimes, disenfranchising male and transgender survivors and denying them their fundamental right to justice.

In failing to provide corresponding and proportionate punitive measures for these groups, the State falls short of its positive constitutional duty to protect the fundamental rights of all citizens under Articles 14, 15 and 21. The statutory disparity between the BNS and the Transgender Persons (Protection of Rights) Act, 2019 creates a repugnant hierarchy of pain that has no place in a modern democratic republic governed by the rule of law.

It must be emphasized that the argument for gender neutrality in sexual offense laws is not an argument against women. Recognizing the existence and experiences of male and transgender victims of serious sexual offenses does not undermine or diminish the epidemic of patriarchal violence against women in India; the law is capable of recognizing more than one truth at once. To resolve this crisis, the Indian legislature must urgently rethink and reform the existing sexual offense laws by adopting a victim-neutral approach. The definition of the victim in the law on rape and other forms of sexual assault must be amended to cover “any person,” shifting the focus of the offense from the anatomy of the survivor to the violation of consent and autonomy. Where required, specific provisions can still address the socio-cultural vulnerability of women. Moreover, the Transgender Persons (Protection of Rights) Act, 2019 must be urgently amended to align the penalty for sexual abuse with the far heavier penalty prescribed under the BNS. Only by abolishing this hierarchy of victimhood and adopting an all-encompassing, human rights-based approach to criminal law can the Indian legal system uphold the true essence of constitutional morality and provide equal protection to all.

A. Evaluation of Hypothesis 1 (H1)

H1: The gender-specific definition of rape under the Bharatiya Nyaya Sanhita, 2023 violates the fundamental rights to equality (Article 14), non-discrimination (Article 15), and life and personal liberty (Article 21) of male and transgender citizens.

Status: Proved.

On the legal framework and constitutional jurisprudence examined in this paper, the hypothesis holds. The retention of gender-specific language in Section 63 of the BNS fails the foundational tests of constitutional validity on three fronts:

1. Violation of Article 14 (Right to Equality): Article 14 permits State classification only if it passes the twin test of “intelligible differentia” (a clear distinguishing factor) and a “rational nexus” with the object sought to be achieved. While biological sex is

an intelligible differentia, using it to deny legal recourse to non-female victims altogether has no rational nexus with the object of the penal law, which is to punish the violation of bodily autonomy. The law arbitrarily assumes that male and transgender bodies cannot be violated in a manner commensurate with rape, creating an unconstitutional hierarchy of victimhood.

2. Violation of Article 15 (Non-Discrimination): Article 15(1) expressly prohibits discrimination on grounds only of sex. The State's traditional reliance on Article 15(3), which permits special provisions for women, is misapplied here. As argued above, the doctrine of protective discrimination is a sword to uplift the marginalized, not a shield to deny justice to others. Protecting women does not constitutionally justify the absolute exclusion of male and transgender victims who suffer identical trauma.
3. Violation of Article 21 (Right to Life and Personal Liberty): The Supreme Court has expansively interpreted Article 21 to include the right to live with dignity and the right to bodily autonomy (*K.S. Puttaswamy*; *Navtej Singh Johar*). By denying male and transgender victims adequate penal remedies, especially after the omission of Section 377, the State strips them of their dignity and of their fundamental right to seek proportionate justice for the violation of their bodily integrity.

B. Evaluation of Hypothesis 2 (H2)

H2: A victim-neutral legal framework for sexual offenses in India will enhance the human rights of marginalized genders without inherently diminishing the legal protection required for cisgender women.

Status: Proved.

The research substantiates this hypothesis by showing that the expansion of human rights is not a zero-sum game. The argument separates the concept of the victim from the socio-legal realities of perpetration.

1. Enhancing Human Rights for the Marginalized: By adopting a "victim-neutral" framework (in which the victim can be "any person"), India would immediately close the statutory void that currently disenfranchises transgender and male survivors. It would harmonize domestic law with the *NALSA* judgment and with international standards such as the Universal Declaration of Human Rights (UDHR) and the Yogyakarta Principles. It would ensure that perpetrators face commensurate penalties (for example, the ten-year minimum under the BNS) regardless of the victim's gender

identity, dismantling the discriminatory hierarchy now embedded in the Transgender Persons (Protection of Rights) Act, 2019.

2. Preserving Protections for Cisgender Women: Comparative jurisprudence supports the hypothesis. Jurisdictions such as the United Kingdom and Canada have adopted victim-neutral language for sexual assault without erasing the legal protection afforded to women. India can achieve the same by making the definition of the victim neutral while retaining procedural safeguards specific to women (such as the presence of female police officers during reporting, or specific evidentiary presumptions). Recognizing that a transgender person or a man can be raped does not, legally or practically, invalidate the serious and ongoing epidemic of patriarchal violence against women; rather, it raises the entire justice system to the protection of bodily autonomy as a universal human right.
