

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

Volume 9 | Issue 3

2026

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Towards a Victim-Centric Criminal Justice System in India: Reconsidering Legal Protection for Men and Transgender Persons

ANAND SHANKAR* AND DR. ATUL JAIN**

ABSTRACT

The Indian criminal justice system has increasingly moved from an offender-centred model towards a framework that recognises the rights, dignity and experiences of victims. Yet several substantive provisions, both under the erstwhile Indian Penal Code and under the Bharatiya Nyaya Sanhita, 2023, remain gender-specific, operating on the assumption that women are victims and men are offenders. This paper examines whether the current criminal justice framework adequately reflects the constitutional developments in equality, dignity and personal liberty under Articles 14, 15 and 21, as expanded in National Legal Services Authority v. Union of India and Navtej Singh Johar v. Union of India. It evaluates the legal protection available to men and transgender persons who experience sexual violence, domestic abuse and coercion, and argues for a gradual, victim-centric and gender-inclusive approach. Drawing on comparative reforms in the United Kingdom, Canada and Australia, the paper contends that gender-neutral drafting is compatible with continued protection for women. It does not call for the removal of existing safeguards for women; rather, it advocates a broader framework capable of recognising all forms of victimisation while preserving protection for historically disadvantaged groups.

Keywords: *victim-centric justice; gender neutrality; Bharatiya Nyaya Sanhita, 2023; transgender rights; Article 14; Article 15; Article 21; male victims; constitutional morality; criminal law reform*

I. INTRODUCTION

The theory of the criminal justice system has transformed across democratic societies over the last few decades. Traditionally, criminal law was concerned mainly with the punishment of offenders and the maintenance of public order. In modern criminal jurisprudence, however, courts and legislatures have begun to recognise the importance of victims and their rights within the criminal justice process. The contemporary understanding of criminal justice therefore

* Author is a Ph.D. Scholar, Amity University, Gurugram, Haryana, India.

** Author is an Associate Professor, Amity University, Gurugram, Haryana, India.

extends beyond punishment and focuses upon fairness, dignity, equality and access to legal remedies for all individuals affected by crime.

In India, the development of criminal law has generally been linked with social realities and historical experiences. Various criminal provisions were enacted to address the specific vulnerabilities faced by women, children and other disadvantaged groups. Provisions relating to rape, cruelty by a husband, dowry death and domestic violence emerged as legislative responses to widespread social problems that harm women. These laws were intended to provide enhanced protection against discrimination, violence and exploitation.

Constitutional jurisprudence in India has evolved gradually since the enactment of the Constitution. The basic principles enshrined in Articles 14, 15 and 21 have progressively expanded the understanding of equality, personal liberty and dignity. The Supreme Court has repeatedly held that constitutional rights are not confined to traditional social categories and must be interpreted in a manner consistent with evolving social realities. The judicial recognition of transgender persons as a third gender, and the protection of sexual minorities, has significantly expanded the constitutional discourse on equality and inclusion.

Notwithstanding these constitutional developments, the Indian criminal justice system continues to contain several gender-specific provisions that operate on the assumption that women are victims and men are offenders. While such assumptions may reflect certain social realities, they do not always account for situations in which men or transgender persons become victims of abuse, coercion, harassment or sexual violence. As a result, concerns have emerged regarding the sufficiency of the existing legal safeguards available to these categories of victims.

The Bharatiya Nyaya Sanhita, 2023, was introduced as a significant reform of India's substantive criminal law. The legislation introduced several new provisions and refined various offences. Nevertheless, many provisions relating to sexual offences, matrimonial disputes and victim protection continue to follow a traditional gender-specific formula. Consequently, debates concerning gender neutrality and victim-centric justice remain as relevant as before, even after the enactment of the new criminal laws.

The victimisation of men has received increasing public, academic and judicial attention in recent years. Various studies conducted across different jurisdictions indicate that men may also experience domestic violence, sexual assault, mental and emotional abuse and coercive control. However, social orthodoxy and legal limitations often prevent such victims from seeking the

remedies they require. Similar challenges are faced by transgender persons, whose experiences are frequently treated as falling outside the traditional legal categories.

The recognition of transgender rights by the Supreme Court in *National Legal Services Authority v. Union of India* marked a significant constitutional milestone. The Court held that gender identity forms an integral part of dignity, autonomy and personal liberty. Subsequently, in *Navtej Singh Johar v. Union of India*, the Supreme Court reaffirmed the constitutional values of equality, dignity and individual autonomy. These decisions collectively suggest that legal protection should not be restricted by rigid gender classifications.

The present study analyses whether the current criminal justice framework adequately reflects these constitutional developments. It evaluates the existing legal protection available to men and transgender persons and examines whether a more victim-centric approach may contribute towards a balanced and gender-neutral criminal justice system. Most significantly, this paper does not call for the removal of protection available to women. Instead, it advocates a broader legal framework capable of recognising the diverse forms of victimisation while preserving safeguards for vulnerable groups.

II. CONSTITUTIONAL FOUNDATIONS OF A VICTIM-CENTRIC CRIMINAL JUSTICE SYSTEM

The Constitution of India forms the foundation of all criminal law and legal structure. Any criminal law provision, irrespective of its social aim, must satisfy the basic constitutional requirements relating to equality, dignity, fairness and personal liberty. Any discussion concerning legal protection for men and transgender individuals must therefore be examined through the lens of constitutional principle rather than solely through traditional social assumptions regarding victimhood.

The constitutional vision of justice is not limited to formal equality. The Constitution seeks to establish substantive equality by ensuring that every individual receives equal protection of the law and equal access to justice. Articles 14, 15 and 21 collectively create the constitutional framework within which criminal law must operate.

A. Article 14 and equality before the law

Article 14 of the Constitution guarantees equality before the law and the equal protection of the laws. This provision enshrines two basic principles. First, all persons are equal before the law, irrespective of their social status or identity. Second, persons in similar situations must receive equal treatment from legal institutions.

The Supreme Court has repeatedly held that Article 14 prohibits arbitrary State action and requires laws to have a reasonable basis for classification.¹ Any legal distinction must rest on an intelligible differentia and must bear a rational nexus with the objective sought to be achieved.

Historically, gender-specific criminal laws were justified on the basis that women faced systemic discrimination, violence and social disadvantage. Such legislative measures were viewed as protection for the vulnerable and were generally held to be constitutionally valid. Over time, however, constitutional jurisprudence has developed a more nuanced understanding of equality. The modern approach to Article 14 requires an examination not only of the legislative objective but also of the practical consequences of legal classifications. Where legal provisions entirely exclude certain categories of victims from protection, questions arise regarding the compatibility of such exclusion with the constitutional guarantee of equal protection.

This issue becomes particularly significant in criminal law when male and transgender victims encounter forms of victimisation that are not adequately recognised within the existing legal structure. If criminal legislation assumes that victimhood belongs exclusively to one gender, it may create situations in which similarly placed individuals receive unequal legal protection.

The principle of equality does not necessarily require identical treatment in every circumstance. It does, however, require that legal distinctions remain constitutionally justified and proportionate to the objectives they seek to achieve.

B. Article 15 and protective discrimination

Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. At the same time, Article 15(3) permits the State to make special provisions for women and children.

The existence of Article 15(3) demonstrates that the Constitution recognises the need for protective legislation in appropriate circumstances. Numerous criminal law provisions concerning sexual offences, domestic violence and dowry-related crimes have historically derived constitutional support from this principle.

However, protective discrimination cannot be interpreted as an unlimited power to perpetuate stereotypes regarding gender roles. The constitutional purpose of Article 15(3) is to remedy

¹ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

disadvantage and inequality, not to institutionalise assumptions regarding victimhood and perpetration.

In *Anuj Garg v. Hotel Association of India*, the Supreme Court observed that protective legislation should not be based upon outdated social stereotypes.² The Court explained that constitutional interpretation must reflect contemporary realities that promote substantive equality.

This principle has important implications for criminal justice reform. While legal protection for women remains necessary in view of prevailing social realities, constitutional analysis also requires an examination of whether the complete exclusion of male and transgender victims remains justified in all circumstances.

A victim-centric criminal justice system does not seek to eliminate protective measures for women. Rather, it seeks to ensure that legal remedies remain accessible to every victim who experiences comparable forms of harm.

C. Article 21 and human dignity

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Its judicial interpretation has significantly extended the scope of this provision to include dignity, privacy, autonomy and access to justice.

The concept of dignity holds a pivotal position within contemporary constitutional jurisprudence. Human dignity requires recognition of the fundamental rights of every person, irrespective of gender, sexual orientation or social identity.

Where victims are denied legal recognition because of their gender identity, concerns arise regarding the compatibility of such exclusion with the constitutional guarantees of dignity and equal protection. In several judgments, the Supreme Court has held that the right to seek legal remedies against violence, coercion and abuse forms an important part of personal liberty and access to justice.

The Supreme Court has recognised that constitutional rights must evolve with changing social realities. Article 21 therefore provides an important constitutional basis for examining whether the existing criminal laws adequately address all forms of victimisation.

² *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1.

III. JUDICIAL EVOLUTION OF GENDER IDENTITY AND CONSTITUTIONAL INCLUSIVENESS

The constitutional position concerning gender identity underwent a significant transformation through judicial interpretation over the last decade. Two landmark decisions of the Supreme Court fundamentally altered the legal understanding of gender, dignity and equality.

A. National Legal Services Authority v. Union of India

In the landmark judgment in *National Legal Services Authority v. Union of India* (NALSA), the Supreme Court formally recognised transgender persons as a third gender and affirmed their constitutional rights under Articles 14, 19 and 21.³

The Court held that gender identity constitutes an integral component of personal autonomy and human dignity. It further observed that constitutional protection cannot be restricted to binary notions of male and female identity.

The judgment also recognised that transgender individuals have historically faced social exclusion, discrimination and the denial of legal recognition. Consequently, constitutional guarantees must be interpreted in a manner that promotes inclusiveness and equal citizenship.

The significance of NALSA extends beyond transgender rights. The decision represents a broader constitutional movement away from rigid gender-binary classifications and towards the recognition of individual dignity.

From the perspective of criminal justice, the judgment raises important questions concerning whether the existing criminal laws adequately include transgender victims and survivors of crime.

B. Navtej Singh Johar v. Union of India

The Supreme Court further strengthened constitutional protection in *Navtej Singh Johar v. Union of India*.⁴

While the facts of the case primarily concerned the decriminalisation of consensual same-sex relationships, the judgment made important observations regarding constitutional morality, dignity and individual autonomy.

The Court rejected majoritarian notions of morality and explained that constitutional rights belong equally to all citizens, irrespective of sexual orientation or gender identity. The judgment

³ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

recognised the principle that constitutional interpretation must remain responsive to changing social realities.

The reasoning in *Navtej Singh Johar* supports the argument that criminal law should be evaluated not only on the basis of historical presumptions but also in the light of constitutional values and equality.

C. Constitutional morality and criminal justice reform

The concept of constitutional morality has emerged as an important standard for assessing criminal legislation. Constitutional morality requires that laws conform to constitutional principles rather than to social prejudices or historical stereotypes.

In the context of victim protection, constitutional morality encourages lawmakers to examine whether the legal system adequately recognises all categories of victims. The objective is not to erase social differences but to ensure that legal institutions remain capable of responding to diverse experiences of harm and victimisation.

A victim-centric criminal justice system therefore seeks to balance two important objectives. First, it must preserve protection for historically disadvantaged groups. Second, it must ensure that other victims are not excluded from legal recognition merely because they fall outside the traditional legal categories.

IV. THE CONCEPT OF VICTIM-CENTRIC JUSTICE

Traditional criminal justice systems focused primarily upon the offender and the offence. Victims often played a limited role in criminal proceedings and were viewed mainly as witnesses.

Modern criminal jurisprudence increasingly recognises that justice must also address the interests and experiences of victims. This approach is commonly described as victim-centric justice.

Victim-centric justice does not depend upon the gender of the victim. Instead, it focuses upon the nature of the harm suffered, the availability of legal remedies and the restoration of dignity.

International human rights instruments increasingly emphasise victim participation, access to remedies and equal treatment before legal institutions. These developments suggest that criminal law should be capable of addressing diverse forms of victimisation, irrespective of gender identity.

In the Indian context, the development of a victim-centric framework may contribute towards greater inclusiveness while preserving the legitimate objective of protecting vulnerable groups. Such an approach would not undermine the protection available to women. Rather, it would strengthen the legitimacy of the Indian criminal justice system by ensuring that every victim receives recognition and access to justice.

V. LEGAL STATUS OF MEN AND TRANSGENDER INDIVIDUALS UNDER THE BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) was enacted with the aim of modernising India's criminal legal framework. Although the legislation introduces various structural changes, many provisions relating to victim protection continue to follow a gender-specific approach. This has generated discussion regarding the extent to which the law includes male and transgender victims.

A. Sexual offences

One of the most debated provisions under the BNS is Section 63, which defines the offence of rape. As with the erstwhile Section 375 of the Indian Penal Code, the provision continues to recognise women as victims and men as perpetrators. As a result, male victims of non-consensual sexual acts do not receive protection under the rape-law framework.

This issue becomes more significant in the light of the major constitutional developments recognising gender identity and personal liberty. While other provisions relating to sexual and physical assault may provide limited legal remedies, the absence of direct recognition creates a legal gap. In practical terms, male victims often rely upon general provisions rather than the specialised protection available under the sexual offence laws.

Similarly, transgender individuals may encounter difficulties when their experiences do not fit within the traditional legal classifications. Although the constitutional courts have recognised transgender identity, substantive criminal law has not fully accommodated this development.

B. Matrimonial cruelty and domestic abuse

Section 85 of the Bharatiya Nyaya Sanhita substantially reproduces the former Section 498A of the Indian Penal Code. The provision criminalises cruelty by a husband or his relatives towards a married woman.

The provision was enacted to address genuine concerns regarding domestic violence, dowry harassment and matrimonial cruelty. However, it does not recognise situations in which men or transgender individuals may experience comparable forms of domestic abuse.

The Supreme Court has on several occasions expressed concern regarding the misuse of matrimonial provisions. In *Arnesh Kumar v. State of Bihar*, the Court emphasised the need for procedural safeguards before arrest in matrimonial disputes.⁵ Similarly, in *Rajesh Sharma v. State of Uttar Pradesh*, the Court acknowledged concerns regarding the mechanical implication of family members in certain cases.⁶

These judicial observations do not diminish the importance of protecting women from domestic violence. Rather, they underline the need for a balanced legal system capable of ensuring fairness for all parties involved.

C. Dowry-related offences

Section 80 of the BNS retains the offence of dowry death in substantially the same form as the previous law. The provision continues to focus upon the protection of married women facing dowry-related violence.

There is no dispute regarding the seriousness of dowry-related crimes in India. However, contemporary discussions concerning gender neutrality raise broader questions regarding whether criminal law should recognise analogous forms of coercion or abuse affecting other individuals.

The continued use of gender-based language reflects a legislative preference for special protection rather than gender-neutral victim recognition. While such an approach may in some respects be justified by prevailing social conditions, it remains open to constitutional debate concerning the equal protection of the laws.

VI. CHALLENGES FACED BY MALE AND TRANSGENDER VICTIMS

The lack of direct legal recognition often results in practical difficulties for victims seeking justice. Male victims of sexual violence may face social pressure, which leads to under-reporting and limited institutional support. Similar challenges affect transgender persons, who frequently encounter discrimination within the investigative and judicial processes.

A further problem arises from prevailing social assumptions regarding victimhood. Historical assumptions generally portray men exclusively as offenders rather than as potential victims. Such stereotypes may discourage reporting and reinforce the invisibility of certain forms of victimisation.

⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

⁶ *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472.

Transgender persons often face limitations arising from a lack of awareness, continuing social exclusion and procedural difficulties. Although legislative developments such as the Transgender Persons (Protection of Rights) Act, 2019 represent important progress, significant gaps continue to exist within the criminal justice system.

VII. THE NEED FOR A VICTIM-CENTRIC APPROACH

A victim-centric criminal justice system focuses upon the nature of the harm suffered rather than upon predetermined assumptions regarding the identity of victims and offenders. Such an approach does not require the removal of the special protection available to women. Instead, it seeks to ensure that legal remedies remain accessible to all persons who experience comparable forms of victimisation.

A gradual movement towards gender-inclusive drafting, the recognition of transgender victims and stronger procedural safeguards may contribute towards a more balanced criminal justice framework. Any reform, however, should remain sensitive to existing social inequalities and continue to protect historically disadvantaged groups.

VIII. COMPARATIVE APPROACHES TO GENDER-NEUTRAL CRIMINAL LAWS

Several jurisdictions have gradually moved towards gender-neutral criminal legislation while maintaining special protection for vulnerable groups. These reforms provide useful guidance for evaluating the future direction of Indian criminal law.

A. United Kingdom

The United Kingdom has adopted a relatively broad approach towards victim protection. Its sexual offences legislation recognises that victims may belong to different genders, depending upon the nature of the offence. The legal framework focuses primarily on consent, coercion and harm rather than on traditional assumptions regarding victimhood.

The United Kingdom experience demonstrates that the recognition of male victims does not reduce the protection available to women. Instead, it expands access to justice by ensuring that all victims can seek legal remedies.

B. Canada

Canadian criminal law follows a largely gender-neutral approach in relation to sexual offences. The Criminal Code focuses on the absence of consent and the conduct of the accused rather than limiting victim status to a particular gender category.

Canadian courts have repeatedly emphasised equality, dignity and non-discrimination in the interpretation of criminal statutes. This approach reflects the constitutional commitment to the equal protection of the law.

C. Australia

Australia has also introduced several gender-neutral provisions concerning sexual offences and domestic violence. Legislative reforms recognise that victimisation may affect individuals irrespective of gender identity.

The Australian experience illustrates that criminal law can accommodate gender diversity while continuing to address the structural violence faced by women. Such reforms are generally accompanied by victim support services, awareness programmes and appropriate procedural laws.

IX. DISCUSSION

The comparative analysis indicates that gender-neutral drafting is not incompatible with victim protection. Several jurisdictions have successfully expanded legal recognition without weakening the safeguards for vulnerable groups.

The Indian position remains distinct because of its historical, cultural and social realities. Women continue to experience disproportionate levels of violence, discrimination and exploitation in many spheres of life. Consequently, any proposal for reform must acknowledge these realities.

At the same time, constitutional developments have broadened the ideas of equality and dignity beyond the traditional gender categories. The judicial recognition of transgender rights and the ongoing debates about the victimisation of men suggest that criminal law may need to adapt gradually to changing social realities. The aim should not be to replace existing protective legislation but to develop a broader framework that can acknowledge all victims. Such an approach would also strengthen public trust in the justice system and improve access to justice.

X. RECOMMENDATIONS AND SUGGESTIONS

The following reforms may contribute towards a more inclusive criminal justice system.

The legislative authorities should undertake a review of the gender-specific criminal provisions under the Bharatiya Nyaya Sanhita, 2023.

Selected offences may gradually adopt gender-neutral terminology where such reform is consistent with constitutional principles and social realities.

Legal recognition should be extended to male and transgender victims in areas where substantive protection remains inadequate.

Law enforcement agencies should receive specialised training concerning gender diversity, victim sensitivity and constitutional values.

Judicial officers and prosecutors should be encouraged to adopt a victim-centric approach when dealing with cases involving gender minorities and gender-based crimes.

Procedural safeguards should be strengthened to prevent the misuse of criminal provisions without undermining genuine victim protection.

Further country-wide empirical research should be conducted regarding male victimisation and transgender experiences within the criminal justice system.

XI. CONCLUSION

The recently enacted Bharatiya Nyaya Sanhita, 2023 represents an important development in Indian criminal law. Nevertheless, the legislation largely retains the earlier legal framework of several gender-based offences. While some of these provisions continue to serve important social objectives, constitutional developments require a broader examination of whether the existing laws adequately recognise all categories of victims.

The landmark judgments of the Supreme Court in *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India* have significantly expanded the constitutional interpretation of dignity, equality and gender identity. These developments point towards a more inclusive approach to the criminal justice system while remaining sensitive to existing social inequalities.

This study finds that the legal protection available to men and transgender persons remains limited in several areas of criminal law. Although complete gender neutrality may not be immediately suitable for every offence, there is a need for a gradual movement towards victim-centric justice consistent with constitutional values.

The future of the Indian criminal justice system lies not in denying the protection available to women but in developing a balanced legal structure capable of recognising the dignity and rights of every individual. A criminal justice system that protects all victims while preserving safeguards for vulnerable groups would better reflect the constitutional ideals of equality and justice.
