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Gender Neutral Rape Laws in India: A Needed Reform

MUKUL¹, SARGAM² AND VARNIT GOYAL³

ABSTRACT

India's rape laws, as defined under Section 375 of the Indian Penal Code (IPC) and now replaced by Section 63 of the Bharatiya Nyaya Sanhita (BNS), continue to operate within a binary gender framework, recognising only women as victims and men as perpetrators. This gender-specific approach to sexual violence has been widely criticised for excluding male and transgender individuals from the ambit of legal protection. Despite evolving understandings of gender and sexuality, the law fails to address the reality that individuals across the gender spectrum can be victims of sexual assault. International human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the Yogyakarta Principles, emphasise the right to equality, non-discrimination, and dignity irrespective of gender identity—principles enshrined in Articles 14, 15, and 21 of the Indian Constitution. Jurisdictions like Canada, the United Kingdom, and New Zealand have adopted gender-neutral definitions of rape, shifting focus from the gender of the victim to the nature of the act and the absence of consent. In India, however, proposed reforms such as those in the 172nd Law Commission Report and private member bills have not yet translated into legislative change. This paper argues that gender-neutral rape laws are not only a legal necessity but also a constitutional and moral imperative to ensure equal access to justice for all survivors of sexual violence.

Keywords: *Gender-neutral rape laws, Sexual violence, Indian Penal Code Bharatiya Nyaya Sanhita, LGBTQIA+ rights, legal reform in India, Transgender victims, Male rape survivors, Equality before law, Article 14 and 21, Yogyakarta Principles, Comparative legal analysis Rape law in India, Human rights and sexual offences, Law Commission 172nd Report*

I. INTRODUCTION

Rape is one of the gravest violations of bodily autonomy and human dignity. However, the legal definition of rape in India continues to be based on a binary understanding of gender, where only a woman is recognised as a victim and only a man as the perpetrator.⁴ This

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⁴Section 63, Bharatiya Nyaya Sanhita, 2023; previously Section 375, Indian Penal Code, 1860.

traditional formulation, previously under Section 375 of the Indian Penal Code, 1860 (IPC), and now under Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS), fails to acknowledge the reality that men, transgender persons, and other gender-diverse individuals can also be victims of sexual violence.⁵

In contrast, international human rights norms—such as those laid down in the Universal Declaration of Human Rights (UDHR) and the Yogyakarta Principles—emphasise the right to equality, non-discrimination, and freedom from violence irrespective of one's gender identity or sexual orientation.⁶ Several jurisdictions, including Canada, United Kingdom, and New Zealand, have already adopted gender-neutral definitions of sexual offences, recognising that rape is an act of violence, not gender.⁷

India's own Law Commission, in its 172nd Report (2000), recommended making rape laws gender-neutral by replacing the term “woman” with “any person” and expanding the scope of the offence to cover all victims regardless of gender.⁸ However, these recommendations have not been implemented, and India continues to rely on gender-specific provisions for such a serious offence. This legal gap not only contradicts Articles 14 and 21 of the Constitution of India, which guarantee equality and the right to life with dignity, but also perpetuates silence and stigma around non-female survivors of sexual violence.⁹

Given the changing socio-legal understanding of gender and consent, the need for a gender-neutral rape law in India is not just a matter of legal reform but a constitutional and moral imperative. This paper explores the current statutory framework, examines international best practices, analyses constitutional mandates, and argues for a just, inclusive, and equitable legal definition of rape.

II. UNDERSTANDING THE CURRENT LEGAL FRAMEWORK

A. Indian Penal Code & Bharatiya Nyaya Sanhita

India's legal approach to rape has long been gender-specific. Under Section 375 of the Indian Penal Code, 1860 (IPC), rape was defined exclusively as a sexual act committed by a man

⁵Ratna Kapur, “Challenging the Gender Binary in Rape Law,” *The Wire*, Jul. 23, 2017, available at <https://thewire.in/gender/rape-laws-india-gender-binary> (last visited Aug. 7, 2025).

⁶United Nations, *Universal Declaration of Human Rights*, 1948; International Commission of Jurists, *The Yogyakarta Principles* (2007), available at <https://yogyakartaprinciples.org/> (last visited Aug. 7, 2025).

⁷Aman Kumar, “Beyond the Binary: Rethinking Gender Neutrality in Indian Rape Law,” (2024) 19(2) *Asian J. Comp. L.* 145.

⁸Law Commission of India, *172nd Report on Review of Rape Laws* (March 2000), available at <https://lawcommissionofindia.nic.in/101-169/Report172.pdf> (last visited Aug. 7, 2025).

⁹Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press, 2015) at 122.

against a woman, involving penetration without her consent.¹⁰ The language of the provision was deeply rooted in patriarchal assumptions—viewing women only as victims and men as sole perpetrators. This framework ignored the possibility of sexual violence faced by men, transgender persons, and individuals of other gender identities.

With the repeal of the IPC and the enforcement of the Bharatiya Nyaya Sanhita, 2023 (BNS) from 1st July 2024, one might have expected a modernised and inclusive definition. However, Section 63 of the BNS retains the same male-on-female understanding of rape, using terms like “man” and “woman” without making the law gender-neutral.¹¹ This means that despite structural legal reforms, the foundational gender bias in defining rape remains unaddressed.

This definition stands in stark contrast to the evolving understanding of sexual violence globally, where emphasis is increasingly placed on the absence of consent rather than the gender of the parties involved.¹² As a result, the Indian legal framework continues to exclude survivors who do not fit into the male-perpetrator/female-victim binary, thereby denying them recognition, legal remedy, and dignity.

B. Alternative Provisions Used

In the absence of gender-neutral rape laws, survivors who are male or transgender are often left to seek justice under Section 377 of the IPC, which criminalised “unnatural offences.”¹³ This section, before being partially struck down by the Supreme Court in *Navtej Singh Johar v. Union of India*, was used to penalise non-consensual same-sex acts—but it was also a flawed substitute for addressing sexual violence outside the male-on-female paradigm. While *Navtej* decriminalised consensual homosexual acts, the law still lacks a specific and inclusive provision for non-female rape survivors.

Another legal recourse comes under the Protection of Children from Sexual Offences (POCSO) Act, 2012, which is gender-neutral in terms of both the victim and the perpetrator—but its application is strictly limited to cases involving minors under the age of 18.¹⁴ Although POCSO reflects a more inclusive approach, it leaves adult male and transgender survivors outside its ambit, once again revealing a glaring legal void in the adult context.

This fragmented and exclusionary approach to sexual violence is not only inconsistent with constitutional values such as equality and dignity under Articles 14 and 21, but also fails to

¹⁰Section 375, Indian Penal Code, 1860.

¹¹Section 63, Bharatiya Nyaya Sanhita, 2023.

¹²Ratna Kapur, “Challenging the Gender Binary in Rape Law,” *The Wire*, Jul. 23, 2017, available at <https://thewire.in/gender/rape-laws-india-gender-binary> (last visited Aug. 7, 2025).

¹³Section 377, Indian Penal Code, 1860; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹⁴The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, § 2(d).

reflect the reality that sexual violence can affect anyone, regardless of their gender identity.¹⁵

III. CONCEPT OF GENDER-NEUTRAL RAPE LAW

A. Definition and Scope

In the legal context, gender-neutral rape laws refer to statutes that define rape or sexual assault in a way that does not restrict the victim or the perpetrator to any specific gender. Instead of focusing solely on male-against-female violence, such laws are drafted to protect “any person” who has experienced non-consensual sexual acts, irrespective of gender identity or sexual orientation.¹⁶

This shift in language—from gender-specific terms like “man” and “woman” to inclusive terms like “person”—is essential in ensuring equal protection under the law. Countries such as Canada, the United Kingdom, and New Zealand have reformed their sexual offence laws to focus on consent, coercion, and bodily autonomy, rather than the gender of the people involved. These reforms acknowledge the reality that men, transgender persons, and nonbinary individuals are also vulnerable to sexual violence. By not recognising them under Indian law, the justice system leaves a large group of survivors without any legal recourse.

The Indian Law Commission's 172nd Report had recommended such a shift back in 2000, urging the legislature to replace gendered language in rape laws with inclusive terms.¹⁷ Unfortunately, this progressive recommendation has not been implemented, leaving a gap in the law that fails to uphold the constitutional guarantees of equality (Article 14) and protection of life and dignity (Article 21).

B. Psychological and Social Realities

The trauma of sexual violence is not determined by the gender of the victim. However, male and queer survivors of rape often face additional layers of trauma due to social stigma, ridicule, and invisibility. Many male survivors are socially conditioned to believe that acknowledging sexual assault undermines their masculinity, leading to feelings of shame, guilt, or disbelief even before any legal process begins.¹⁸ In the case of transgender individuals, the fear of discrimination or police apathy further discourages reporting.

The absence of gender-neutral laws contributes to underreporting of such cases. Survivors

¹⁵Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* (Oxford University Press, 2015) at 122.

¹⁶Law Commission of India, *172nd Report on Review of Rape Laws* (March 2000), available at <https://lawcommissionofindia.nic.in/101-169/Report172.pdf> (last visited Aug. 7, 2025).

¹⁷ *Ibid.*

¹⁸ Ratna Kapur, “Challenging the Gender Binary in Rape Law,” *The Wire*, Jul. 23, 2017, available at <https://thewire.in/gender/rape-laws-india-gender-binary> (last visited Aug. 7, 2025).

who do not fall within the traditional gender binary are often told by police that "rape laws don't apply to you", leading to denial of First Information Reports (FIRs) and even re-victimisation during investigation.¹⁹

Further, studies have shown that non-female survivors often internalise their experiences or are forced to label them under vague or unrelated offences, such as "unnatural acts" or "assault", which do not reflect the severity or nature of the trauma.²⁰ This legal invisibility deepens psychological harm and denies them the closure and justice they deserve.

The combination of legal exclusion and social marginalisation creates a chilling effect, discouraging survivors from coming forward and perpetuating the belief that rape is a crime that only happens to women. In reality, gender neutrality in law is not about undermining women's protection—it's about expanding justice to all who need it.

IV. CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS

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¹⁹ Arushi Singh, "Invisible Victims: Male and Trans Survivors of Sexual Violence in India," *India Legal*, Nov. 2022, available at <https://www.indialegalive.com/cover-story-articles/focus/male-rape-victims-india-laws/> (last visited Aug. 7, 2025)

²⁰ UNODC, *Global Study on Sexual Violence: Addressing Gender Identity and Reporting Barriers*, 2021

²¹ The Constitution of India, Art. 14.

²² The Constitution of India, Art. 15(1).

²³ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Justice K.S. Puttaswamy (Retd.) v. Union of India*,

gap in the law that fails to uphold the constitutional guarantees of equality (Article 14) and protection of life and dignity (Article 21).

Indian jurisprudence has evolved to embrace a more inclusive view of rights, particularly after landmark decisions such as *Navtej Singh Johar v. Union of India*,²⁴ which decriminalised consensual same-sex relations, and *National Legal Services Authority (NALSA) v. Union of India*,²⁵ which recognised the rights of transgender persons as equal citizens. Yet, the definition of rape remains frozen in a binary framework, contradicting the very spirit of these progressive rulings.

B. International Human Rights Standards

India is a signatory to several international instruments that promote gender equality, dignity, and protection from violence, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁶

Most notably, the Yogyakarta Principles—a set of principles developed in 2006 on the application of international human rights law in relation to sexual orientation and gender identity—explicitly call on states to protect people of all genders from sexual violence and to ensure access to justice.²⁷ These principles affirm that legal frameworks must reflect the diversity of gender identities and sexual orientations and ensure non-discriminatory access to remedies.

Globally, countries like Canada, the United Kingdom, and New Zealand have adopted gender-neutral definitions of rape and sexual assault, recognising that the nature of the offence lies in the violation of consent and personal autonomy, not the gender of the persons involved.²⁸

By failing to adopt a gender-neutral framework, India not only falls short of its constitutional obligations but also lags behind in fulfilling its international human rights commitments. Reforming rape laws to make them inclusive is, therefore, not only a matter of domestic justice but also essential to India's global human rights credibility.

(2017) 10 SCC 1.

²⁴*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁵*National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

²⁶United Nations, *Universal Declaration of Human Rights*, 1948; *International Covenant on Civil and Political Rights*, 1966; *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979.

²⁷International Commission of Jurists, *The Yogyakarta Principles*, 2006, available at <https://yogyakartaprinciples.org/> (last visited Aug. 7, 2025).

²⁸Aman Kumar, "Beyond the Binary: Rethinking Gender Neutrality in Indian Rape Law," (2024) 19(2) *Asian J. Comp. L.* 145.

V. COMPARATIVE ANALYSIS: GLOBAL PERSPECTIVES

A. Countries with Gender-Neutral Rape Laws

While India retains a gender-specific definition of rape, many jurisdictions across the world have adopted gender-neutral laws to address sexual violence inclusively and effectively. These countries recognise that rape is an act of power and domination, not simply a gendered interaction, and have thus shifted from traditional definitions rooted in male-against-female narratives.

In Canada, the Criminal Code was amended in 1983 to abolish the term “rape” entirely, replacing it with the broader term “sexual assault”, defined in gender-neutral language.²⁹ The Canadian model focuses on the act itself and the absence of consent, not the gender of the victim or the offender.³⁰ This allows all survivors—regardless of gender identity—to report and seek justice for sexual violence.

Similarly, the United Kingdom reformed its sexual offence laws through the Sexual Offences Act, 2003, which defines rape as penetration without consent but includes any person as a victim.³¹ Though the act retains certain distinctions based on the form of penetration, it nevertheless offers protection to men and transgender individuals, thereby expanding the legal net to address a wider spectrum of sexual crimes.

In New Zealand, the Crimes Act, 1961 (as amended), defines rape in a gender-neutral manner and provides a comprehensive classification of sexual offences that considers the gender identity of all parties involved.³² The emphasis remains on consent and coercion rather than the binary identities of victim and offender.

These models illustrate that gender-neutral sexual offence laws do not dilute protections for women but expand access to justice for all survivors. By moving the legal conversation from gender to bodily autonomy and consent, these nations have developed inclusive frameworks that better reflect modern social realities.

B. Lessons for India

The Indian legal system can draw valuable lessons from these international approaches. First, shifting from a gender-specific to a consent-based framework would ensure that the focus remains on the violation of a person's autonomy, not their gender. Second, it demonstrates that

²⁹Criminal Code of Canada, RSC 1985, c C-46, §§ 271–273.

³⁰Constance Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900–1975* (University of Toronto Press, 2008).

³¹Sexual Offences Act, 2003 (UK), c. 42, §§ 1–4.

³²Crimes Act, 1961 (New Zealand), Part 7 (as amended by the Crimes Amendment Act, 2005).

protection for one group need not come at the cost of another; rather, legal inclusivity enhances the justice system's credibility.

Moreover, the legal infrastructure in India already uses gender-neutral terminology in other contexts, such as in the Protection of Children from Sexual Offences (POCSO) Act, 2012, which applies to all minors irrespective of gender.³³ The success of POCSO in handling diverse cases of child sexual abuse offers a precedent for similar reforms in adult sexual offence laws.

Lastly, embracing international best practices would help India align with its human rights obligations, including those under the Universal Declaration of Human Rights (UDHR), ICCPR, and the Yogyakarta Principles, all of which emphasise non-discrimination, dignity, and equal access to justice.

Failing to adopt such reforms not only alienates a vast number of survivors but also keeps Indian law anchored in outdated social assumptions, unfit for a society that increasingly recognises gender as a spectrum.

VI. CONCLUSION

The absence of gender-neutral rape laws in India highlights a critical gap between constitutional guarantees and criminal law protections. Despite the progressive recognition of diverse gender identities in landmark cases such as *National Legal Services Authority v. Union of India*³⁴ and *Navtej Singh Johar v. Union of India*³⁵, the current legal framework under Section 375 of the Indian Penal Code and its counterpart in Section 63 of the *Bharatiya Nyaya Sanhita* continues to define rape exclusively as a male-on-female crime. This approach violates the principle of equality before law enshrined under Article 14 of the Constitution of India and denies justice to male, transgender, and non-binary survivors.

Comparative legal systems, such as those of the United Kingdom³⁶, Canada³⁷, and New Zealand³⁸, provide clear evidence that inclusive definitions of sexual offences are not only feasible but necessary for ensuring justice for all victims, regardless of gender. The Law Commission of India, in its 172nd Report³⁹, had already recommended replacing gendered language with terms like “person” to ensure broader protection and a consent-based approach.

³³The Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, § 2(d).

³⁴*National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

³⁵*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³⁶Sexual Offences Act, 2003 (UK), c. 42, §§ 1–4.

³⁷Criminal Code of Canada, RSC 1985, c C-46, §§ 271–273.

³⁸Crimes Act, 1961 (New Zealand), Part 7 (as amended by the Crimes Amendment Act, 2005).

³⁹Law Commission of India, *172nd Report on Review of Rape Laws*, March 2000.

The fear of misuse, often cited against gender neutrality, is largely unfounded and manageable through existing legal safeguards such as Sections 182 and 211 of the IPC, which penalise false information and false accusations respectively. Legal reform must therefore be accompanied by institutional changes—such as sensitisation of law enforcement, inclusive victim support mechanisms, and gender-neutral training for the judiciary and medical professionals—to ensure effective implementation.

Justice cannot be gender-exclusive. A legal system that fails to recognise the trauma of all survivors, regardless of gender identity, falls short of its constitutional and moral duty. Gender-neutral rape laws do not undermine women's rights; rather, they uphold the principle of equal protection and ensure that justice is not denied on the basis of gender. India must now move from recognition to realisation—by enacting comprehensive, inclusive, and enforceable gender-neutral laws that reflect the true spirit of justice and human dignity.
