

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

Volume 9 | Issue 1

2026

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Sexuality, Consent, and the Law: Reimagining Rape Laws in India through a Gender-Neutral Lens

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ABSTRACT

This article critically analyses the heteronormative and patriarchal underpinnings of Indian rape laws, to persuade for a paradigm shift to gender-neutral and constitutionally compatible legislations. Despite the incremental broadening of rights provided under path-breaking decisions such as “NALSA v. Union of India (2014)” and “Navtej Singh Johar v. Union of India (2018)”, Section 63 of the Bharatiya Nyaya Sahita, 2023, the definition of rape remains exclusively a crime that is committed by a man against a woman. By framing the definition of this offence as gender(S)-specific, such gender(S)-specific definition of the offence eo violates the constitutional guarantees of equality under Article 14 and dignity under Article 21 for it provides no protection to male, transgender and non-binary victims. Applying a doctrinal methodology, it examines legal texts, case law, treaty commitments, and comparative law from such jurisdictions as Canada, the United Kingdom, and Australia. It magnifies systemic issues, such as legislative, procedural, and infrastructural weaknesses, patriarchal myths, institutional bias, and the absence of comprehensive support. The document recommends a redrafting of Section 63 to make it gender neutral, in addition to systemic changes like extension of the Nirbhaya Fund to all survivors, gender neutral one stop centers and gender inclusive sex education through the National Curriculum Framework 2023. Finally, the research argues for a victim-centered lens all based on what I term constitutional morality and one that foregrounds intersectionality and fair justice for all survivors of sexual violence, regardless of genderosity and sexual orientation.

Keywords: Gender-neutral rape laws, constitutional morality, sexual violence, LGBTQ+ rights, Section 63 BNS

I. INTRODUCTION

Legal, social, and feminist critiques have been levelled at the development of India's rape laws.

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The legal definition of rape has traditionally mirrored patriarchal standards that place the male offender and female victim at the centre, with its origins in colonial legislation under the Indian Penal Code (IPC), 1860. (Chakraborty, 2016). The criminal law (amendment) acts of 2013 and 2018 are two examples of legislative amendments that have broadened the definition of rape beyond penile-vaginal penetration. However, the laws still retain a binary and heteronormative framing of sexual violence (Singh, 2020). The status quo is unaffected by the Bharatiya Nyaya Sanhita (BNS), 2023, which supersedes the IPC; Section 63 of the BNS recognises rape victims solely as women (Ministry of Home Affairs, 2023).

Thus, sexual assault in India is still primarily understood from a female-to-male perspective, with little regard for male, transgender, and non-binary survivors. Not only does this method perpetuate patriarchal stereotypes, but it also routinely disregards the experiences of people who do not identify as cisgender female (Kumar, 2019; Venkatesh, 2021). Survivors of sexual violence, regardless of their gender identity or orientation, are unrecognised by the legal system due to the heteronormative belief that men cannot be victims and women cannot be offenders (Agnes, 2017).

A more complex legal comprehension is necessary due to the fact that sexuality, consent, and gender identity all intersect. In the seminal case of "NALSA v. Union of India (2014)," the Indian Supreme Court ruled that everyone, regardless of their gender identity, has the same rights guaranteed by the Indian Constitution in Articles 14, 15, 19, and 21. Nevertheless, substantive criminal law has failed to reflect this constitutional affirmation (Moghe, 2015). Decriminalizing consensual same-sex relations was a watershed moment in Indian constitutional jurisprudence regarding sexuality in "Navtej Singh Johar v. Union of India (2018)," but victims of non-cisgender sexual assault do not have legal recourse (Narrain, 2018).

Regardless of these court rulings, India's criminal justice system does not include a victim-centered strategy that acknowledges the diversity of gender identities. Many LGBTQ+ rape victims go unrecognised, which can lead to a lack of justice, stigma, and underreporting, according to scholars (Menon, 2018; Roy, 2022). Inclusionary justice remains obstructed due to the persistence of the idea of constitutional morality, which maintains equality and dignity independent of societal norms (Baxi, 2021).

Furthermore, Indian rape law has used a progressive but problematic framework when defining consent. Interpretations frequently perpetuate gender stereotypes, even though the concept of "unequivocal voluntary agreement" (Section 375, IPC) was introduced in the 2013 Amendment (Parashar, 2021). When it comes to cases involving oppressed genders, courts still have a hard

time applying the Supreme Court's ruling in "Patan Jamal Vali v. State of Andhra Pradesh (2021)" that emphasised the importance of understanding consent as autonomous and free from coercion (Kapur, 2022).

As compared to other countries, India has been slow to pass legislation protecting victims of gender-neutral rape. Legislative frameworks in several countries do not discriminate based on gender, including the Sexual Offences Act, 2003 in the UK, the Criminal Code, R.S.C., 1985 in Canada, and the Crimes Act 1900, NSW in Australia (Crofts, 2010). Gender and sexuality-related moral and cultural anxieties are deeply ingrained in Indian society, which is why similar reforms have been met with resistance (Dutta, 2017).

In this study, we will use doctrinal legal analysis as a springboard to rethink Indian rape laws from a more inclusive and gender-neutral perspective. The study would benefit greatly from a doctrinal approach, which would allow for a thorough analysis of statutes, court decisions, constitutional provisions, and academic interpretations (Hutchinson & Duncan, 2012). This paper aims to fill gaps in the law, challenge gender biases, and propose reforms by examining Indian rape laws under the Bharatiya Nyaya Sanhita, 2023, in relation to constitutional jurisprudence and landmark judgments.

Research Questions of the Study:

1. How do Indian rape laws reinforce gender binaries and heteronormative assumptions?
2. What are the constitutional and judicial precedents supporting a gender-neutral legal framework?
3. What doctrinal reforms can be proposed to align sexual assault laws with the realities of diverse gender identities?

This study aims to add to the growing body of literature advocating for a victim-centric and inclusive Indian criminal justice system. It is not only a legal necessity but also a moral imperative to ensure that the law protects all individuals, irrespective of their gender or sexuality.

Objectives of the Study:

1. To examine the ways in which Indian rape laws reinforce gender binaries and heteronormative assumptions in their language, interpretation, and implementation.
2. To analyze relevant constitutional provisions and judicial pronouncements that support the development of a gender-neutral legal framework for addressing sexual violence in India.

3. To propose doctrinal reforms aimed at aligning Indian sexual assault laws with the lived realities and legal rights of individuals across diverse gender identities.

II. CONCEPTUAL UNDERSTANDING: SEXUALITY, CONSENT AND GENDER IDENTITY

An inclusive doctrinal framework for rape law must begin with precise definitions of **sexuality**, **consent**, and **gender identity**—each grounded in legal doctrine, policy guidelines, and scholarly research.

A. Sexuality as a Spectrum

A person's sexual orientation, behaviours, identities, and sex characteristics are all parts of their sexuality, according to the World Health Organization (WHO) (WHO, 2024). The World Health Organization stresses that categories such as "heterosexual," "bisexual," and "transgender" are artificial and that there is a wide range of sexual orientations and identities (WHO, 2024). The National Medical Commission (NMC) of India updated its MBBS Forensic Medicine curriculum in 2022 to eliminate discriminatory categories, such as the criminalization of consensual homosexual activity ("NMC revises MBBS curriculum," 2022), reflecting this inclusive approach in medical education guidelines. Legal frameworks can now recognise sexuality beyond binary norms, thanks to this normative basis.

B. Consent — Post *Patan Jamal Vali* (2021)

Genuine consent must be voluntary, informed, and cognizant of the survivor's unique context—specifically, disability and caste—as the Supreme Court emphasised in the case of "*Patan Jamal Vali v. State of Andhra Pradesh (2021)*". According to Justice D.Y. Chandrachud, "it is imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively" when considering the case of a scheduled-caste woman who is visually impaired (Patan Jamal Vali, 2021, para. 12). The Supreme Court reaffirmed that, regardless of societal or physical limitations, consent is more than just doing nothing; it is an active display of free will (Patan Jamal Vali, 2021). Redefining consent as an agency-driven, multi-faceted act necessitating doctrinal application in various contexts, this doctrine.

C. Gender Identity — Recognition in *NALSA* (2014)

Gender identity is not determined by biology but by how a person perceives themselves, according to the Supreme Court's 2014 decision in National Legal Services Authority (NALSA) v. Union of India. Articles 14, 15, 19(1)(a), and 21 of the Constitution guarantee the right to self-identification as gender and the right to receive state assistance free from medical interventions or stereotype-based categorization (NALSA, 2014). Governments were ordered

to make appropriate accommodations and welfare programmes available to transgender people as a result of the ruling, which recognised a "third gender" and supported affirmative action for transgender people (NALSA, 2014). An important step toward gender-neutral interpretation of criminal statutes has been laid down by this doctrinal landmark.

D. Constitutional Morality

Articles 14, 15(1), and 15(3) of the Constitution prohibits arbitrary differentiation based on gender and sex. Article 19(1)(a) protects free expression and personal autonomy, while Article 21 guarantees life and personal liberty—including dignity and privacy (Constitution of India, 1950). Supreme Court precedents such as *Puttaswamy v. Union of India* (2017) affirm privacy as integral to dignity. In *NALSA*, the Court underscored the need for "constitutional morality" that transcends majoritarian norms, extending constitutional protections to all gender identities (NALSA, 2014). Therefore, constitutional morality mandates legal frameworks that fairly represent all genders.

E. Intersectionality: Caste, Gender, Sexual Orientation

Intersectionality examines how overlapping social categories—such as caste, gender, orientation, disability—create unique experiences of discrimination and vulnerability. *Patan Jamal Vali* (2021) applied this lens by considering how caste and disability exacerbated sexual harm, and asserted that criminal law sentencing must reflect such compounded oppression (Patan Jamal Vali, 2021, para. 12). Further scholarship supports that individuals from marginalized castes and non-heteronormative orientations experience elevated sexual violence and systemic neglect (Nagashima, 2023; Sudarshan & Ramprakash, 2024). Intersectionality in legal doctrine ensures that sexual assault law is truly responsive to the heterogeneous realities of survivors.

III. EVOLUTION OF RAPE LAWS IN INDIA: FROM IPC TO BNS 2023

A. Historical Overview: Section 375 of the Indian Penal Code (IPC), 1860

Section 375 of the Indian Penal Code, which was initially passed in 1860, had a narrow and sexist definition of rape: it was defined as when a man had sexual relations with a woman without her consent under specific circumstances (Indian Penal Code, 1860). This provision only criminalised rape involving female victims and male offenders, and it only applied to peno-vaginal penetration. A man and his wife could engage in non-consensual intercourse once they reached a specific age, thanks to the exception clause, which effectively established marital rape immunity (Kamble, 2020).

Few changes were made to the law in the years that followed until the early 1980s. The Criminal Law (Amendment) Act, 1983 strengthened punishment for custodial rape cases and instituted substantial procedural protections in response to the judiciary's trivialization of the crime in the 1979 case of *Tukaram v. State of Maharashtra*, also known as the Mathura case. The Indian Evidence Act's Section 114A now allows for the presumption of lack of consent under specific circumstances, and Section 376(2) of the Act criminalises severe forms of rape (Kumar, 2017; Singh, 2019).

B. The Nirbhaya Catalyst: Criminal Law (Amendment) Act, 2013

Justice Verma's historic recommendations in the 2012 Nirbhaya case became law in 2013 with the passage of the Criminal Law (Amendment) Act. In 2013, the Criminal Law (Amendment) Act significantly rewrote Section 375 of the Indian Penal Code to encompass acts of oral sex, object insertion, and anal penetration, among others, that do not involve the penile region. In response to previous decisions that erred in interpreting a lack of resistance as consent, the legislative definition of consent was "unequivocal voluntary agreement" (Rao, 2014).

An increase from 16 to 18 years old was made to the age of consent, and new crimes like stalking (Section 354D) and voyeurism (Section 354) were added (Kapur & Cossman, 2013). But the Justice Verma Committee ignored two of its most important recommendations: (i) making it a crime to commit rape within a marriage, and (ii) changing the definition of rape to exclude gender (Verma Committee Report, 2013).

C. Child-Centric Reforms through Amendment Act, 2018

In response to nationwide outrage over the Kathua rape case, the Criminal Law (Amendment) Act, 2018 further amended Sections 376AB, 376DA, and 376DB to provide for stricter punishment, including the death penalty, for rape of girls under 12 and 16 years of age (Criminal Law (Amendment) Act, 2018). However, the Act did not extend protection to boys or transgender children, maintaining a female-only victim framework (Chakraborty & Narain, 2019).

D. The Bharatiya Nyaya Sahita (BNS), 2023 – Section 63

The BNS, 2023 replaced the IPC but retained the same gendered structure for defining rape. Section 63 of BNS replicates IPC Section 375 almost verbatim, maintaining the language of "a man" committing rape against "a woman," thus preserving the male-perpetrator and female-victim binary (Bharatiya Nyaya Sahita, 2023). Exception 2 of the section continues to grant immunity to husbands, stating that non-consensual sex with a wife above 18 is not rape.

In contrast to earlier jurisprudential developments, the BNS repealed IPC Section 377 entirely (Navtej Singh Johar v. Union of India, 2018), but did not insert any alternative provision to penalize non-consensual same-sex acts. This legislative omission effectively leaves male and transgender victims of sexual violence without adequate legal remedy (Nagpal & Rajdev, 2023).

E. Doctrinal and Constitutional Critique of BNS Section 63

The preservation of a rape definition that is exclusive to one gender in BNS, 2023 goes against the grain of developing constitutional law. Article 15(1) forbids discrimination based on gender, and Article 14 guarantees equality before the law. The law establishes an unfair categorization by limiting victim recognition to women alone (Kapur, 2022). Similarly, the right to one's own life and liberty, including the right to one's own body and sexual dignity, are guaranteed in Article 21. (Justice K.S. Puttaswamy v. Union of India, 2017).

Despite the Supreme Court's affirmation of the right to self-identification of gender in "NALSA v. Union of India (2014)," the BNS does not incorporate this principle into its wording. In addition, the reading down of the marital rape exception in cases involving girls aged 15 to 18 in Independent Thought v. Union of India (2017) implies that the continuation of Exception 2 under Section 63 is both outdated and unlawful (Baxi, 2014; Menon, 2021).

Many in the legal and civic communities have voiced their disapproval, arguing that the current system goes against the principles of constitutional morality because it does not include gender-neutral language and keeps the marital rape exemption in place (Sinha, 2023; Agnes, 2017). The new law in India goes backwards by not protecting certain groups of victims, in contrast to countries like Canada and the UK that have long used gender-neutral language to describe sexual offences (Crofts, 2010).

IV. LEGAL INADEQUACIES AND THE CASE FOR GENDER-NEUTRAL RAPE LAWS

India's criminal justice framework for addressing sexual violence, while significantly reformed in recent decades, remains embedded in a **heteronormative and binary understanding of gender**. Despite advancements in the jurisprudence of dignity and equality, rape continues to be legally defined in India as an offence **committed by a man against a woman** (Bharatiya Nyaya Sanhita, 2023, Section 63). This approach, inherited from Section 375 of the Indian Penal Code, systematically excludes male and transgender individuals from the scope of rape law and stands at odds with both constitutional mandates and international human rights obligations.

A. Issues in Current Laws

1. Gender-Specific Definition of Rape

The central legal inadequacy lies in the fact that Indian rape law is inherently gender-specific. Section 63 of the Bharatiya Nyaya Sanhita (BNS) restricts the victim of rape to a “woman” and the perpetrator to a “man.” This formulation excludes male, transgender, and non-binary individuals from seeking justice under the country’s primary anti-rape provision, despite documented evidence that individuals of all genders can be victims of sexual violence (Kumar, 2019).

While other jurisdictions such as Canada, the United Kingdom, and Nepal have adopted **gender-neutral rape laws**, India has not followed suit (Crofts, 2010; Amnesty International, 2020). The protectionist rationale historically underpinning this gendered framework reinforces patriarchal norms by treating women as inherently vulnerable and men as inherently aggressive—an outlook that ignores sexual violence outside of heterosexual contexts.

2. Absence of Legal Remedies for Male and Transgender Victims

The repeal of Section 377 of the IPC following the “*Navtej Singh Johar v. Union of India (2018)*” judgment decriminalized consensual same-sex relations but also removed the only statutory route that previously allowed prosecution for **male-on-male sexual assault**. The BNS 2023 does not introduce a replacement clause to criminalize non-consensual same-sex acts. As a result, there is now a **legal vacuum for male victims**, who may have to resort to lesser offences like “grievous hurt” or “outraging modesty,” which do not carry the same gravity or punishment (Nagpal & Rajdev, 2023).

Similarly, transgender individuals—despite being recognized under “*NALSA v. Union of India (2014)*” as a third gender—do not have access to rape law protections unless they can be legally recognized as “female.” This exclusion violates the constitutional principles of equality (Article 14), non-discrimination (Article 15), and dignity (Article 21), and fails to recognize the lived realities of sexual violence experienced by LGBTQ+ individuals (Menon, 2021).

3. Discriminatory Burden of Proof and Stereotypes

Although procedural reforms such as Section 114A of the Indian Evidence Act presume absence of consent in specified circumstances, broader assumptions around consent still influence adjudication. Courts continue to evaluate credibility based on **archaic stereotypes**—such as whether the victim resisted, had previous sexual experience, or delayed reporting the crime (Kapur, 2022). These assumptions are further compounded when the victim belongs to a marginalized caste, community, or gender identity, as seen in “*Patan Jamal Vali v. State of Andhra Pradesh (2021)*”, where the Court had to explicitly apply an intersectional lens.

Moreover, for male or transgender victims seeking redress under alternative provisions, the absence of a formal presumption akin to Section 114A makes the **evidentiary burden disproportionately high**, further obstructing access to justice (Raman, 2020).

B. Judicial Interpretations Lacking Inclusivity

1. *Tukaram v. State of Maharashtra (1979)*

The *Mathura rape case* revealed how **judicial bias against the victim** could override factual circumstances. The Supreme Court held that since the victim did not resist, the accused could not be convicted of rape (*Tukaram v. State of Maharashtra*, 1979). This led to the 1983 amendments, but the underlying **belief that “real” rape requires physical resistance** continues to influence judgments, particularly in cases involving non-traditional victims.

2. *Deepak Gulati v. State of Haryana (2013)*

In this case, the Supreme Court acquitted the accused on the grounds that the victim had previously eloped with him, implying that consent was present (*Deepak Gulati v. State of Haryana*, 2013). The Court's focus on the woman's past behavior, rather than on consent at the time of the act, reflects persistent judicial reluctance to adopt a survivor-centric understanding of consent.

3. *Queen Empress v. Khwaja Nazir Ahmad (1945)*

This pre-independence case emphasized that the judiciary should not interfere with prosecutorial discretion unless there is a clear abuse of process. However, in modern contexts, this doctrine is often misused to **justify inaction in cases involving male or LGBTQ+ victims**, who face systemic barriers at the reporting stage due to stigma and lack of legal recognition (Chakraborty, 2016).

C. International Obligations

India is a signatory to several international treaties that mandate **equal protection from violence**, regardless of gender or orientation:

- **Universal Declaration of Human Rights (UDHR)**, Article 7 ensures equal protection under the law (UN General Assembly, 1948).
- **International Covenant on Civil and Political Rights (ICCPR)**, Article 2 obliges states to guarantee rights “without distinction of any kind,” including sex and gender (UN, 1966).

- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, though gender-specific, has been interpreted by the CEDAW Committee to include discrimination against LGBTQ+ individuals as part of its mandate (CEDAW Committee, 2010).

By retaining a binary definition of rape, India fails to align with its treaty obligations. CEDAW's General Recommendation No. 35 explicitly calls for states to **address all forms of gender-based violence**, not just violence against women in the narrow sense (CEDAW Committee, 2017).

V. GENDER-NEUTRAL JURISPRUDENCE: INTERNATIONAL AND INDIAN PERSPECTIVES

The discourse on gender-neutral rape laws is not unique to India. Several liberal democracies have recognized that the experience of sexual violence transcends gender binaries and have consequently reformed their legal frameworks. In contrast, Indian law—despite constitutional recognition of transgender rights and sexual autonomy—continues to restrict the scope of rape laws to male perpetrators and female victims. This section provides a comparative overview of international legal frameworks and highlights India's constitutional jurisprudence that supports the case for gender-neutral rape laws.

A. Comparative Legal Frameworks

Australia (Crimes Act 1900, NSW)

Australia's legal systems have long moved away from gender-specific definitions. The *Crimes Act 1900* (New South Wales) defines sexual assault in gender-neutral terms. Section 61I states: "Any person who has sexual intercourse with another person without the consent of the other person... is guilty of an offence." The law does not limit the victim or offender to any specific gender (New South Wales Government, 2023). Moreover, the Act also includes provisions for aggravated sexual assault and attempts, again framed without gender restrictions. This inclusive drafting reflects a legal and social acknowledgment that both men and women—as well as gender-diverse individuals—may be victims or perpetrators of sexual violence (Stubbs, 2020).

United Kingdom (Sexual Offences Act 2003)

The *Sexual Offences Act 2003* in the UK is a widely cited example of gender-neutral legal reform. Section 1 defines rape as penetration with a penis without consent, and while this applies only to male perpetrators, other sections—such as sexual assault (Section 3), causing a person to engage in sexual activity without consent (Section 4), and offences against children—are

completely gender-neutral (Great Britain, 2003). The UK approach balances anatomical limitations (in defining rape) with inclusivity in recognizing multiple forms of non-consensual sexual contact. This legal model has been commended for being both specific and inclusive (Temkin & Ashworth, 2004).

Canada (Criminal Code 1985)

Canada's *Criminal Code*, R.S.C., 1985, defines sexual assault as a non-consensual act of a sexual nature that violates the sexual integrity of the victim (Section 271). The statute uses fully gender-neutral language for both offender and victim. Further, Sections 272 and 273 provide aggravated classifications such as sexual assault with a weapon and aggravated sexual assault, without any reference to gender (Department of Justice Canada, 2020). Canadian courts have also taken a progressive view in interpreting these provisions to protect LGBTQ+ and male survivors, ensuring a victim-centric approach to sexual violence (Craig, 2014).

B. Judicial Recognition in India

NALSA v. Union of India (2014)

In a landmark judgment, the Supreme Court in *National Legal Services Authority v. Union of India* recognized the right of individuals to identify with a gender other than that assigned at birth. It held that the term "person" in Articles 14, 15, 19, and 21 includes transgender persons and affirmed their right to dignity, equality, and bodily autonomy (NALSA v. Union of India, 2014). This case laid the constitutional foundation for inclusive legal interpretations, yet the BNS 2023 fails to reflect this jurisprudence in its drafting of rape laws.

"Navtej Singh Johar v. Union of India (2018)"

In *Navtej Singh Johar*, the Supreme Court decriminalized consensual same-sex relations, declaring that the Constitution protects the right to choose one's partner and engage in consensual sexual relations, irrespective of gender. The Court emphasized the principles of dignity, privacy, and equality (Navtej Singh Johar v. Union of India, 2018). While the ruling decriminalized queer relationships, it did not lead to affirmative reforms in sexual assault laws, which still exclude LGBTQ+ victims.

X v. Principal Secretary, Health and Family Welfare (2021)

In this case, the Delhi High Court held that denial of gender-affirming healthcare to a transgender person violated their fundamental rights under Article 21. The Court emphasized the right to self-determined gender identity and healthcare autonomy (X v. Principal Secretary,

2021). This case reinforces the need for inclusive legislative and policy frameworks that affirm gender-diverse identities.

C. Delhi High Court PIL Proceedings (2022)

In 2022, the Delhi High Court received multiple petitions that questioned the constitutionality of the gender-specific definition of rape, as stated in IPC Section 375. According to the petitioners, it is a violation of Articles 14, 15, and 21 of the Constitution to establish separate laws for victims of rape who are male and transgender (RIT Foundation v. Union of India, 2022). Although the case is still under consideration, at the preliminary hearings the state's position on the potential abuse of gender-neutral laws, particularly against men, became clear. The petitioners, however, stressed that the possibility of abuse must not be a condition for protecting legal rights, and that the proper remedy, rather than the denial of rights, is procedural safeguards (Agrawal, 2022).

This case shows how constitutional law and civil society are coming to the conclusion that rape laws need to change so that everyone's rights are protected, regardless of their gender or gender identity.

VI. LEGISLATIVE GAPS AND CHALLENGES IN IMPLEMENTATION

Significant legislative and implementation gaps persist in India's response to sexual violence, notwithstanding constitutional jurisprudence and international advocacy in favour of inclusive legal protections. The lack of justice for survivors of sexual assault who are not women is due to a combination of statutory gaps, institutional resistance, long-standing social stereotypes, an inadequate support system, and a lack of action from policymakers.

A. Societal Myths and Stereotypes Around Masculinity and Male Rape

One of the primary challenges in implementing gender-neutral rape laws is the **societal perception of masculinity**. Indian society, like many others, often associates masculinity with physical strength, dominance, and emotional invulnerability. These gendered assumptions create the myth that "real men cannot be raped" (Chakraborty, 2016; Banerjee & Banerjee, 2017). Male survivors who do come forward often face **ridicule, disbelief, or emasculation**, further discouraging reporting and prosecution (Mendiratta & Chakraborty, 2018).

Research shows that male rape is **underreported** due to stigma and fear of being perceived as weak or unmanly (Sivakami et al., 2019). Transgender and non-binary individuals face even greater challenges due to **social ostracization and identity invisibility**, often being treated as deviant rather than as victims (Dutta & Roy, 2014). These societal myths directly influence both

victims' willingness to report and the seriousness with which law enforcement treats such complaints.

B. Institutional Reluctance and Law Enforcement Bias

Another obstacle lies in the **institutional reluctance** to recognize male and LGBTQ+ individuals as legitimate survivors of sexual violence. Police personnel are often inadequately trained to handle such cases, and survivors frequently encounter **hostile or dismissive attitudes** at police stations (Human Rights Watch, 2020). Male victims may be ridiculed or blamed, while transgender victims are often misgendered, harassed, or denied the right to file First Information Reports (FIRs) (Srinivasan & Sabarwal, 2020).

Even though the **Transgender Persons (Protection of Rights) Act, 2019** mandates non-discriminatory access to healthcare, legal aid, and protection from abuse, its implementation remains **patchy and underfunded** (Chakrapani, 2021). Law enforcement's heteronormative bias perpetuates the assumption that sexual assault laws are applicable only in male-on-female contexts, reinforcing procedural discrimination (Raman, 2020).

C. Lack of Infrastructure for Non-Women Survivors

India's support infrastructure for rape survivors—including shelter homes, medical support, psychological counseling, and legal aid—is overwhelmingly **designed for cisgender female victims**. There is a conspicuous absence of **shelter homes or rehabilitation programs** for male and transgender survivors (Centre for Social Research, 2020). Hospitals lack gender-sensitive protocols, and sexual assault evidence collection kits are designed assuming female anatomy (Sivakami et al., 2019).

The **One Stop Centres** (OSCs), launched under the Ministry of Women and Child Development's scheme to support violence survivors, do not explicitly cater to non-female victims, leaving male and transgender survivors without accessible and safe recovery spaces (Ministry of Women and Child Development, 2021). This lack of inclusive infrastructure undermines not only physical recovery but also **access to justice**.

D. Misuse of Gender-Neutral Laws?

Opponents of gender-neutral rape laws often cite the **fear of misuse**, especially false allegations against men, as a reason to retain gender-specific provisions (Kumar, 2019). However, legal scholars argue that **every legal provision is susceptible to misuse**, and that potential for abuse cannot justify exclusion or denial of rights to an entire group (Kapur, 2022). India's legal system

has provisions for **punishing false complaints** under Section 211 IPC and other procedural safeguards like pre-trial inquiry.

Moreover, the **Supreme Court in Lalita Kumari v. Government of Uttar Pradesh** (2014) has emphasized mandatory registration of FIRs in cognizable offences. Yet, this ruling is unevenly applied in cases involving male or LGBTQ+ victims, where complaints are often refused or “settled” informally, suggesting that **bias, not procedural integrity, drives differential application** (Menon, 2021).

E. Absence of Protective and Remedial Frameworks

The absence of **statutory frameworks** specifically recognizing male and transgender victims results in their invisibility in public policy, resource allocation, and victim support programs. For example, the **Nirbhaya Fund**, instituted in 2013, is exclusively earmarked for women, excluding male and LGBTQ+ victims from compensation schemes (Sarkar & Roy, 2021).

Likewise, government awareness campaigns and sex education curricula fail to address **non-heteronormative sexual violence**, reinforcing the myth that rape is solely a women’s issue. Without policy-level reform, even the most progressive court judgments risk being symbolic rather than transformative.

VII. RECOMMENDATIONS AND THE WAY FORWARD

The persistent exclusion of male, transgender, and non-binary victims from the ambit of India’s rape laws raises serious concerns about the inclusivity, equality, and constitutionality of existing provisions. Reforms are urgently needed to bridge the gap between constitutional guarantees and statutory protections. A multi-pronged strategy—comprising legislative, procedural, and policy reforms—is imperative to ensure that the criminal justice system in India responds adequately to the diverse realities of sexual violence.

A. Legislative Reforms

Amending Section 63 of the BNS to Adopt a Gender-Neutral Definition of Rape

The most immediate reform required is the redrafting of Section 63 of the Bharatiya Nyaya Sanhita, 2023, to eliminate gender specificity. The current wording—limiting rape to acts committed by a man against a woman—is constitutionally inadequate and fails to reflect the progressive jurisprudence developed in cases such as “*NALSA v. Union of India (2014)*” and “*Navtej Singh Johar v. Union of India (2018)*”. A gender-neutral formulation will ensure parity under Article 14 and protection of bodily autonomy under Article 21 (Kumar, 2019; Kapur, 2022).

Creation of Separate Clauses for Aggravated, Marital, and Digital Rape

In addition to a gender-neutral main clause, it is essential to codify specific offences reflecting aggravated circumstances. These may include:

- **Aggravated rape**, where the offence is committed by a person in authority, on a child, or by multiple perpetrators.
- **Marital rape**, which must be recognized as a punishable offence irrespective of the gender of the spouse. The current exemption for husbands under Indian law violates international human rights obligations (CEDAW Committee, 2017).
- **Digital rape**, involving non-consensual penetration with objects or via electronic means, should be codified with clear definitions, as such acts often escape justice under traditional interpretations of penile penetration.

These reforms will align Indian law with international standards seen in Canada's *Criminal Code* and the UK's *Sexual Offences Act 2003*, which classify offences based on the nature of the act, not the gender of the participants (Craig, 2014; Temkin & Ashworth, 2004).

B. Procedural Safeguards

Sensitization of Police, Judiciary, and Medical Professionals

Law enforcement and medical response often act as the first interface for survivors of sexual violence. Currently, there exists a significant lack of sensitivity toward male and transgender survivors (Sivakami et al., 2019). Mandatory gender-sensitization training should be institutionalized in police academies, judicial training institutes, and medical colleges. These modules must address unconscious biases, respectful communication, and protocols for handling cases involving LGBTQ+ victims.

Establishment of Gender-Neutral One-Stop Centres (OSCs)

The Government's One Stop Centre scheme should be restructured to explicitly include male and LGBTQ+ survivors. Each district should have an OSC that offers shelter, medical care, legal assistance, and psychological counseling, irrespective of the gender identity of the victim (Ministry of Women and Child Development, 2021). Infrastructure must be updated to ensure privacy, safety, and affirmative care for all survivors.

C. Policy and Societal Measures

Inclusion of Male and LGBTQ+ Victims in the Nirbhaya Fund

The current administration of the Nirbhaya Fund restricts support services, compensation, and

rehabilitation programs primarily to women. This exclusion is not only discriminatory but violates the equality and non-discrimination principles under Articles 14 and 15. The fund should be extended to cover all survivors of sexual violence, accompanied by revised operational guidelines and outreach strategies (Sarkar & Roy, 2021).

Sex Education Reform in Line with NCF 2023

The **National Curriculum Framework 2023** emphasizes inclusivity, mental health, and critical thinking. Sexuality education must be redesigned to address issues of consent, boundaries, and sexual violence without perpetuating gender binaries. Curricula should explicitly address the vulnerabilities and rights of all individuals, including those from LGBTQ+ communities. School-based education is a critical tool for de-stigmatizing male and transgender victimhood and preventing future abuse (UNESCO, 2018).

D. Model Redrafted Provision for Section 63 (BNS)

To institutionalize a gender-neutral legal framework, the following redrafted version of Section 63 is proposed:

Section 63: Sexual Assault

(1) A person is said to commit the offence of sexual assault if:

(a) such person penetrates, to any extent, their sexual organ or any object into the vagina, anus, or mouth of another person, or causes another person to do so;

(b) such penetration occurs without the consent of the other person.

(2) The offence of sexual assault shall be punishable with rigorous imprisonment of not less than ten years, which may extend to life, and shall also be liable to fine.

(3) The provisions of this section shall apply irrespective of the gender or sexual orientation of the victim or the perpetrator.

This provision is intentionally drafted in neutral terms (“a person” and “another person”), in alignment with jurisprudence and best practices from other jurisdictions. It ensures inclusive justice without compromising the gravity of the offence.

VIII. CONCLUSION

The evolution of rape laws in India reflects a gradual, albeit insufficient, movement away from colonial constructs toward constitutional morality. However, the continued reliance on a gendered and heteronormative legal framework reveals the persistence of patriarchal underpinnings within the Indian criminal justice system. As examined in this paper, Section 63

of the Bharatiya Nyaya Sanhita, 2023, retains the narrow definition of rape as a crime committed by a man against a woman. This formulation not only excludes male and transgender victims from legal protection but also stands in violation of the constitutional mandate of equality and dignity.

A shift from patriarchal morality to constitutional morality is essential in the contemporary legal landscape. The Indian Constitution, through Articles 14, 15, 19, and 21, guarantees the right to equality, non-discrimination, personal liberty, and dignity to all persons, irrespective of sex, gender identity, or orientation. Judicial pronouncements such as *NALSA v. Union of India*, *Navtej Singh Johar v. Union of India*, and *X v. Principal Secretary, Health and Family Welfare* have consistently expanded the scope of these rights to include LGBTQ+ individuals and non-binary persons. Despite this progressive jurisprudence, statutory law continues to lag, failing to accommodate the realities of diverse survivors of sexual violence.

To address this inconsistency, a victim-centric and gender-inclusive approach to rape law is not only desirable but constitutionally required. Gender-neutral legislative drafting, procedural reforms, infrastructure development, and sensitization of institutions are fundamental to building a responsive legal system. Importantly, the law must focus on the violation of consent, not on the gender of the survivor or the anatomy of the act. Such a transformation will ensure that all individuals, regardless of their identity, receive equal protection under the law and equitable access to justice.

Ultimately, the reform of rape laws must not be seen as a dilution of women's rights but as an expansion of human rights. The goal is not to replace one form of exclusion with another, but to create a legal framework that affirms dignity, equality, and justice for every survivor of sexual violence in India.

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