
FROM EXCLUSION TO INCLUSION

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ABSTRACT

This paper explores an important part of the Indian legal framework governing sexual offences through the lens of feminist jurisprudence. The continued exclusion of male, transgender, non-binary individuals from the ambit of Section 63 of Bharatiya Nyaya Sanhita (BNS), undermines the constitutional imperatives of equality, dignity, and non-discrimination under Articles 14, 15, 21. The procedural and evidentiary shortcomings under the Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) exacerbate the systematic barriers to justice for non-female survivors. The persistence of colonial era beliefs with the newly established laws contradicts the purpose of making our justice system more democratic. The replacement of Indian Penal code with Bharatiya Nyaya Sanhita was projected as a break from colonial legacies, the substantive provisions reflect mere cosmetic changes, failing to challenge the colonial patriarchal jurisprudence that conceived women as property and men as dominant agents. The preservation of gendered language and marital rape immunity suggests a superficial legislative change that lacks feminist or intersectional perspectives. The systematic and institutional obstacles exacerbate the marginalization of non-female survivors. Law enforcement officers or healthcare professionals frequently lack the necessary training or established procedures to handle cases of sexual violence against men and queer individuals, resulting in secondary victimization, underreporting, and procedural errors. This argument suggests that the supposed decolonization of India's criminal laws has not resulted in meaningful gender inclusivity. It advocates for a comprehensive, survivor-centric legal framework that incorporates intersectional and gender-sensitive principles, thereby aligning domestic statutory law with international human rights obligations and contemporary legal theory. The study concludes with suggestions for changing the current legal system to guarantee fair treatment and access to justice for everyone, regardless of their gender identity.

Keywords: BNS, BNSS, BSA, Rape Laws, Sexual Offences

Introduction

Sexual violence in India continues to be a widespread human rights concern, influenced by deeply ingrained patriarchy and a legal framework that has historically been narrow. Despite several attempts at legal reform, the current understanding of rape is still limited to a heteronormative and gender-binary framework, which only recognizes women as victims and men as perpetrators. This framework disregards the lived experiences of male, transgender, and non-binary survivors, making their suffering legally invisible.

The introduction of Bharatiya Nyaya Sanhita aimed at decolonizing and modernizing Indian criminal law, but Section 63 of BNS¹ which replaces Section 375 of Indian penal code,² continues to define rape exclusively as a male-on-female act of penetration, maintaining outdated assumptions about gender identity. The continuation of the marital rape exception demonstrates a patriarchal perspective on marriage as an unchangeable agreement for sexual consent, contradicting constitutional provisions under articles 14,³ 15,⁴ and 21.⁵

In the new code of criminal procedure and the Indian evidence act, which replaces the previous code, only procedural changes are made. These updated codes do not offer comprehensive protection or procedures for survivors who do not fit within the traditional binary framework. Medical and police protocols remain designed around cisgender female victims, with little to no recognition of the specific needs or vulnerabilities of queer and male survivors. Even protections against revealing rape-related evidence under the BSA are phrased in a way that only applies to women.

Literature review

1. Critical Analysis of Provision relating to Rape in India

In his article, Suryansh Shukla⁶ critically examines the evolution of rape laws in India, tracing their origins from the Indian Penal Code of 1860 to the key amendments of 1983, 2013, and

¹ Bharatiya Nyaya Sanhita, § 63 (2023) (India).

² Indian Penal Code, § 375 (1860) (India).

³ INDIA CONST. art. 14.

⁴ INDIA CONST. art. 15.

⁵ INDIA CONST. art. 21.

⁶ Suryansh Shukla, *Critical Analysis of Provision Relating to Rape in India*, 2INT'LJ.LEGAL SCI. & INNOVATION 3 (2020).

2018, achieved prompted by major public outrage following landmark cases such as the Mathura, Nirbhaya, Kathua, and Unnao rape cases. While the amendments expanded the definition of rape, introduced new sexual offences, and strengthened procedural laws, Shukla argues that major gaps remain including the continued exception for marital rape, gender specific language in Section 375 IPC, and inconsistencies with the POSCO Act.

2. Controlling Women's Sexuality: Rape Law in India

In this chapter, Geetanjali Gangoli⁷ critically explores the complex intersection of Indian Rape Law, Feminist activism, and social structure, arguing that rape in India functions as both a legal and sociocultural tool for controlling women's sexuality. She highlights that while Indian Feminists since the 1970s have framed rape as an instrument of male power and systemic oppression, the legal system has largely perceived it as a matter of honour, especially tied to women's chastity and familial reputation. Gangoli reviews pivotal cases like the Mathura, Rameezabee, and Maya Tyagi custodial rape cases, which sparked national feminist campaigns and led to the 1983 Criminal Law Amendment. However, she points out that despite legal reforms, including the introduction of custodial rape provisions and shifts in burden of proof, patriarchal attitudes persist, judicial interpretations often still rely on victim character, marital status, and "respectability" to determine credibility. The chapter further critiques the continued exemption of marital rape. Gangoli also analyzes failed reform efforts such as 1992 Sexual Violence Bill and the limited implementation of Law Commission recommendations, noting that despite some positive changes, patriarchal, casteist, and classist biases in both law and society continue to deny justice to many survivors.

3. Decoding Rape Laws: Gender Neutrality in Rape – A Transnational Perspective

Devakumar Jacob and Ms. Radha Sharan⁸ argue for the urgent need to reform Indian rape laws to make them gender-neutral, highlighting both domestic and international legal comparisons. The authors critique Section 375 of the Indian Penal Code for defining rape exclusively as a crime committed by a man against a woman, thereby excluding LGBTQ+ victims from legal protection. They contrast this with progressive legal frameworks in countries like the UK,

⁷ Geetanjali Gangoli, *Controlling Women's Sexuality: Rape Law in India*, in INTERNATIONAL APPROACHES TO RAPE 107 (Nicola Henry & Anastasia Powell eds., 2011).

⁸ Devkumar Jacob & Radha Sharan, *Decoding Rape Laws: Gender Neutrality in Rape – A Transnational Perspective*, 4 E. AFR. SCHOLARS J. EDUC., HUMAN., & LITERATURE 23 (2021).

Canada, Germany, and US, which have amended their laws to recognize sexual assault against all genders and orientations.

4. Age of Consent: Challenges and Contradictions of Sexual Violence Laws in India

Amita Pitre and Laxmi Lingam⁹ critically examine how recent changes in Indian Sexual violence laws, especially the increase of the legal age of consent from 16 to 18 through the POSCO Act (2012) and Criminal Law Amendment (2013), have paradoxically harmed adolescents by criminalizing consensual sexual activity and reinforcing patriarchal control. The authors argue that these laws, while designed to protect children abuse, often end up policing adolescent sexuality, especially in cases involving inter-caste or inter-religious elopement, where families use statutory rape charges to assert control. The article highlights empirical studies showing that a large share of rape cases filed under POSCO involve consensual adolescent relationships, often reported by disapproving parents.

5. Critical Analysis of Development of Rape Laws in India: From the Social Transformation Perspective

Annapurna Chakraborty¹⁰ presents a socio-legal critique of Indian rape laws by analyzing their historical evolution, key case laws, and the gap between legal reform and social mindset. Through analysis of Sections 375 and 376 IPC, the 172nd Law Commission Report, and statistical data from the NCRB and NCW, the paper emphasizes that real societal change must involve legal implementation, institutional sensitivity, and civic activism, framing rape not as a “women’s issue” but as a national concern demanding collective moral accountability.

6. Deconstructing Anomalies: Rethinking Rape Laws Through the Lens of Evolving Jurisprudence on Gender and Sexuality in India

Amit Kumar and Tanaya Kamlakar¹¹ critique India’s rape laws for their rigid adherence to binary, phallogocentric definitions that exclude LGBTQIA+ communities and alternative Forms of sexual violence. The authors trace the historical development of rape jurisprudence in India,

⁹ Amita Pitre & Lakshmi Lingam, *Age of Consent: Challenges and Contradictions of Sexual Violence Laws in India*, 29 SEXUAL & REPROD. HEALTH MATTERS 2 (2021).

¹⁰ Annapurna Chakraborty, *Critical Analysis of Development of Rape Laws in India: From the Social Transformation Perspective*, SSRN (Apr. 4, 2013).

¹¹ Amit Kumar & Tanya Kamlakar, *Deconstructing Anomalies: Rethinking Rape Laws Through the Lens of Evolving Jurisprudence on Gender and Sexuality in India*, MNLU Mumbai Research Paper Series (2024).

from the colonial framework influenced by Sir Matthew Hale to the partial reforms following the Mathura and Nirbhaya cases. The authors advocate for a gender-neutral approach to rape laws, comparable to international jurisdictions that criminalize all forms of non-consensual penetration using inclusive language.

7. An Assessment of the Arguments Against Gender Inclusivity in Rape Law in India

Nikunj Kulshreshtha¹² offers a comprehensive critique of the major objections raised against making India's rape laws gender inclusive. Through doctrinal, constitutional, and comparative analysis, the author systematically dismantles common arguments such as the alleged lack of male and non-binary victims, fears of legal misuse, dilution of attention to female survivors, and adequacy of existing laws like the Transgender Persons Act, 2019 and Section 63 of Bharatiya Nyaya Sanhita, 2023. He advocates for a shift in India's legal paradigm from heteronormative and biologically essentialist frameworks to one centers on sexual autonomy and bodily integrity, recommending reforms that define sexual violence inclusively and treat all victims with equal seriousness and protection under the law.

8. Gender Neutrality: Needs & Practical Enforcement

Adarsh Mishra and Manthan Sharma¹³ argue for comprehensive gender-neutral rape law reforms in India to ensure constitutional equality and justice for all individuals, regardless of gender identity. The paper makes a strong case for criminalizing marital rape, dismantling patriarchal notions of implied consent within marriage. Citing global legal models and persistent underreporting of sexual violence against LGBTQIA+ persons and men, the authors call for not just legal reform but also widespread sensitization of law enforcement and judiciary. Ultimately, they argue that gender-neutral rape laws are essential for upholding bodily autonomy, human dignity, and India's constitutional commitment to non-discrimination.

9. Breaking the Silence: The Urgent Need for Inclusive Rape Laws in India to Protect Men – Insights from the movie 376 D

Sakkcham Singh Parmaar¹⁴ advocates for the recognition of male and transgender survivors

¹² Nikunj Kulshreshtha, *An Assessment of the Arguments Against Gender-Inclusivity in Rape Law in India*, 15 ONATI SOCIO-LEGAL SERIES 3 (2025).

¹³ Adarsh Mishra & Manthan Sharma, *Gender Neutrality: Needs & Practical Enforcement*, SSRN (2024).

¹⁴ Sakkcham Singh Parmaar, *Breaking the Silence: The Urgent Need for Inclusive Rape Laws in India to Protect men – Insights from the movie 376 D*, THE DIALOUGE BOX BLOG (2024).

within India's legal framework for sexual violence. Parmaar critiques the Bharatiya Nyaya Sanhita, 2023, for perpetuating binary gender norms by assuming that only women can be rape victims and only men can be perpetrators. Drawing from statistical evidence, including a 2007 Ministry of Women and Child Welfare study and National Crime Records Bureau data, the article highlights the significant but often hidden prevalence of male sexual abuse. The article also points out inadequacies in the Transgender Persons Act, 2019, for its lenient punishment structure and exclusion from comprehensive rape protections. Ultimately, Parmaar calls for a gender-neutral, inclusive legal reform that not only expands the definition of rape but also dismantles patriarchal assumptions in law and society, ensuring justice and dignity for all survivors, irrespective of gender identity.

10. Reconceptualizing Rape in Law Reform

Shraddha Chaudhary¹⁵ presents a profound critique of India's rape laws, arguing that the legal definition of rape is still rooted in a male-centric, penetration-focused framework that fails to uphold the sexual autonomy and bodily integrity of victims. Chaudhary concludes that law reform must move beyond outdated penetration standards and embrace a more inclusive, intersectional legal paradigm that centres on victim autonomy, thereby reflecting the reality of diverse sexual violence experiences.

Legal reform: Gains, Gaps and Gendered Boundaries

Indian law concerning sexual violence currently upholds misconceptions about gender roles, disregards the rights of survivors, and perpetuates patriarchal control over women's bodies. Exclusion of non-female survivor is not merely a drafting flaw but a systemic injustice that contradicts India's constitutional ethos and international obligations under CEDAW,¹⁶ ICCPR¹⁷ etc. The law's refusal to recognize male or queer survivors affirms damaging stereotypes that men cannot be rapes, that women are passive victims, and that sexual violence occurs only in heterosexual context. These myths result in underreporting, police apathy, medical neglect, and judicial disbelief, thereby institutionalizing trauma for anyone outside the binary. The absence of criminalizing marital rape underscores the persistence of patriarchal structures within the

¹⁵ Shraddha Chaudhary, *Reconceptualizing Rape in Law Reform*, 13 SOCIO-LEGAL REV. 156 (2017).

¹⁶ Convention on Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁷ International Convention on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

legal system, despite ongoing efforts by judges and activists to bring about reforms.

The requirement is not only for gender-neutral legislation, but for gender-sensitive, intersectionally inclusive legal interpretations. A purely neutral approach risks flattening power hierarchies and erasing women's vulnerability; however, a feminist legal model can balance this by extending legal recognition and procedural dignity to all survivors, irrespective of gender identity.

The origins of India's rape laws trace back to the Indian Penal Code (IPC), 1860,¹⁸ drafted under Lord Macaulay's Chairmanship. Section 375 IPC¹⁹ defined rape as penile-vaginal penetration by a man against a woman without her consent. The provision reflected Victorian-era morality, rooted in the idea of women as property and marriage as a legitimating framework for male sexual access. Exception 2 to Section 375²⁰ explicitly stated that sexual intercourse by a man with his own wife, if she is above 15 years of age, does not constitute rape even without the consent of the wife. The marital rape exception, premised on the belief that a wife's consent is perpetual and irrevocable, continues to exist even today, despite India's constitutional commitments and international obligations. The IPC did not recognize rape in custodial settings, nor did it acknowledge non-penile forms of sexual violence, same-sex assaults or male and queer survivors. The law's underlying assumptions about gender roles, sexuality, and consent remained largely untouched well into the post-colonial period.

Historical and Structural Foundation of Sexual Violence Law in India

Following independence in 1947, India retained the colonial criminal codes with only marginal amendments. The first serious challenge came with the Mathura case (*Tukaram v. State of Maharashtra*, 1979).²¹ In this case, a young tribal girl was allegedly raped by two policemen inside a police station. The Supreme Court acquitted the accused, citing lack of resistance and implied consent. The judgement triggered a wave of protests. The critique focused not just on judicial bias, but on the structure of law itself, which failed to account for power imbalances, custodial contexts, and the meaning of consent beyond physical resistance. The 2012 Delhi

¹⁸ Indian Penal Code (1860) (India).

¹⁹ Indian Penal Code, § 375 (1860) (India).

²⁰ Indian Penal Code, § 375 Exception 2 (1860) (India).

²¹ *Tukaram v. State of Maharashtra*, (1979) 2 S.C.C. 143 (India).

gang rape case, Nirbhaya case,²² became a national moment of reckoning. Public outrage prompted the government to form the Justice Verma Committee.

The introduction of Bharatiya Nyaya Sanhita (BNS), promised to decolonize and modernize India's criminal law. However, Section 63 of the BNS²³ reproduces Section 375 IPC²⁴ nearly verbatim. It retains the gendered language and the marital rape exception. This legislative stagnation is not merely a missed opportunity but reflects a broader reluctance to engage with contemporary constitutional jurisprudence.

The law presumes a heteronormative act, centered on male penetration and female violation thus reinforcing biological essentialism. This narrow framework excludes:

- Excludes male survivors, despite growing evidence of male sexual abuse, especially in institutional and custodial settings.
- Denies legal protection to transgender, non-binary, and intersex individuals, whose experiences of sexual violence often fall outside binary anatomical classifications.
- Prevents such survivors from accessing rape-specific protections like fast-track trials, compensation schemes, and procedural safeguards.

This gender exclusivity not only violates the spirit of Articles 14²⁵ and 21²⁶ of the Constitution, which guarantee equality and dignity, but also contravenes the Supreme Court's own ruling in *Navtej Singh Johar v. Union of India* (2018)²⁷ and *NALSA v. Union of India* (2014),²⁸ both of which affirm the gender identity and sexual autonomy are constitutionally protected.

Even where male or transgender survivors report sexual assault, the justice system exhibits deep discomfort and disbelief. Complaints are often reclassified under lesser provisions or simple assault, defying them the gravity and procedural rigor accorded to rape cases. Prosecution in cases with male and non-binary survivors face ridicule, erasure, and retaliatory

²² *Mukesh v. State (NCT of Delhi)*, (2017) 6 S.C.C. 1 (India).

²³ Bharatiya Nyaya Sanhita, § 63 (2023) (India).

²⁴ Indian Penal Code, § 375 (1860) (India).

²⁵ INDIA CONST. art. 14.

²⁶ INDIA COSNT. art. 21.

²⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

²⁸ *Nat'l Legal Servs. Auth. V. Union of India*, (2014) 5 S.C.C. 438 (India).

violence. Police often refuse to register FIRs or use misgendering language, reflecting both transphobia and legal illiteracy.

One of the foundational patriarchal assumptions in rape law is that men cannot be raped, a belief rooted in gender norms that conflate masculinity with dominance, strength, and emotional stoicism. Male survivors of sexual assault often hesitate to report their abuse for fear of shame, emasculation, and disbelief. This silence is institutionally mirrored in the absence of male rape shield laws, gender-inclusive medical protocols and public awareness campaigns. Most state-run victim support centers are designed exclusively for women, leaving other survivors without access to trauma-informed counselling or rehabilitative services.

The legal and procedural neglect of transgender and intersex individuals represents one of the most egregious blind spots in India's criminal justice system. Even after the NALSA judgement recognized self-identification of gender as a constitutional right, rape laws have not been aligned to ensure inclusivity. For example:

- FIRs are still routinely registered in the wrong gender or not at all.
- Medical examination forms use sex-assigned-at-birth criteria, often resulting in invasive, insensitive, or irrelevant procedures.
- Courts have little guidance on how to apply evidence law or procedural fairness in cases involving transgender people.

Several countries have moved towards gender-neutral but gender-sensitive rape laws. For instance:

- South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007²⁹ defines rape in gender-neutral terms and includes anal, oral, and object penetration.
- Canada's Criminal Code³⁰ criminalizes all non-consensual sexual contact, regardless of gender.

²⁹ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

³⁰ Criminal Code, R.S.C. 1985, c. c-46, §§ 271-273 (Can.).

- UK's Sexual Offences Act, 2003³¹ recognizes both male and female rape victims and accommodates gender variance.
- Argentina's Law No. 26485³² recognizes all gender identities as potential victims of violence and mandates training for state officials.
- Sweden's 2018³³ Consent Law defines rape based solely on absence of consent, without requiring violence or coercion, shifting the burden to the accused to ensure mutual agreement.

To dismantle patriarchal assumptions and ensure constitutional parity, Indian rape law must:

- Redefine sexual offences in gender-neutral and consent-based terms.
- Remove exception of marital rape from BNS.
- Introduce procedural and evidentiary reforms that address the needs of transgender, intersex, non-binary, and male survivors.
- Mandate police and judicial training in gender and sexual diversity.
- Establish inclusive victim support systems under the Victim Compensation Schemes and One-Stop Crisis Centers.

Without these changes, the law will continue to privilege a narrow model of victimhood, ignoring the diverse and intersectional realities of sexual violence in India.

Gendered gaps and Contradictions

The Bharatiya Sakhsya Adhiniyam,³⁴ which replaces the Indian Evidence Act of 1872,³⁵ retains many of the structural evidentiary assumptions of its predecessor. Although Section 53A

³¹ Sexual Offences Act 2003, c. 42 (UK).

³² Ley de Protección Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en los Ámbitos en que se Desarrollen sus Relaciones Interpersonales, Law No. 26.485, Mar. 11, 2009 (Arg.).

³³ Lag om i brottsbalken [Law Amending the Penal Code], SFS 2018:601 (Swed.).

³⁴ Bharatiya Sakhsya Adhiniyam, 2023 (India).

³⁵ Indian Evidence Act, 1872 (India).

(formerly 146 IPC) bars reference to a survivor's character or prior sexual history to prove consent, trial transcripts and appellate judgements often reveal indirect moral scrutiny.

One key challenge lies in the continued privilege of physical resistance and medical corroboration. Courts frequently draw adverse inferences in the absence of injuries, despite psychological studies showing that many survivors, particularly those experiencing "freeze" or tonic immobility, do not resist physically. Furthermore, the judiciary often expects immediate reporting, overlooking cultural stigma, fear of retaliation, and internalized shame as reasons for today.

In addition, medical jurisprudence manuals used by state-run hospitals are outdated and lack trauma-informed frameworks. The infamous and now discredited "two-finger test" has been prohibited, yet its spirit survives through the language of vaginal laxity, sexual habituation, or hymenal status in medico legal reports.

Modern constitutional jurisprudence in India has recognized bodily autonomy, decisional privacy, and gender identity as central tenets of Article 21. Yet, rape law reforms under the BNS and BNSS have not harmonized with these developments.

- The Supreme Court's landmark verdict in *K.S. Puttaswamy v. Union of India* (2017)³⁶ recognized privacy and consent as integral to personal liberty.
- In *Navtej Singh Johar v. Union of India* (2018)³⁷ the court decriminalized homosexuality and affirmed sexual autonomy regardless of gender. Still the criminal law framework refuses to acknowledge same-sex or queer rape, let alone provide protection.

While legal reforms have expanded the conceptual boundaries of sexual violence by going from criminalizing just penetration to even non penetrative non-consensual sex, India's rape law still requires substantial restructuring to align with constitutional mandates, global standards, and the realities of diverse survivors. A comprehensive reform agenda must address the intersection of gender, power, and procedural equity, ensuring that no survivor irrespective

³⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

³⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

of gender identity, sexual orientation, caste, class, or marital status is denied access to justice.

The definition of rape must be amended to become gender neutral in text but gender sensitive in application. This includes:

- Recognizing that any person, regardless of gender identity, can be a victim or perpetrator of sexual violence.
- Retaining survivor-protective procedures for cisgender women while extending parallel safeguards to transgender, non-binary, intersex, and male survivors.
- Ensuring medical, police, and judicial staff are trained to interact respectfully and appropriately with non-cisgender complainants.

Exception 2 to Section 63 of BNS³⁸ must be repealed. Consent does not dissolve within the institution of marriage, and its continued denial violates Articles 14,³⁹ 15⁴⁰ and 21⁴¹ of the constitution. The legal system must treat all non-consensual sexual acts as violations, regardless of the marital status of the parties involved.

The procedural framework under the BNSS must be made trauma-informed and survivor-responsive:

- Mandate mandatory video-recording of survivor statements and ensure access to legal and psychological assistance.
- Require gender-diverse medical and forensic examiners trained in non-invasive, rights-based practices.
- Penalize acts of police non-compliance with FIR registration or coercion to “settle” complaints, especially in cases involving socially marginalized groups.

Under the BSA, courts must adopt a jurisprudence of consent-centered analysis rather than relying on outdated ideas of resistance or chastity. Presumptions under Section 119 (replacing

³⁸ Bharatiya Nyaya Sanhita, § 63 Exception 2 (2023) (India).

³⁹ INDIA CONST. art. 14.

⁴⁰ INDIA CONST. art. 15.

⁴¹ INDIA CONST. art. 21.

114A) must be expanded to include non-traditional context of power imbalance, including institutional settings, queer relationships, and digital coercion. Further, all evidence relating to prior sexual behavior, gender expression, or lifestyle of the survivor should be inadmissible unless strictly necessary and directly relevant, with the burden on the defense to prove relevance before introduction.

All judicial officers and public prosecutors must undergo mandatory training in constitutional values, gender and sexual diversity, and trauma-informed adjudication. This is essential to align statutory interpretation with judgements such as *Puttaswamy*, *Navtej Singh Johar*, and *NALSA*, and to prevent the reassertion of moralistic or heteronormative assumptions in courtrooms. Simultaneously, curriculum reforms in law schools and police academies must include intersectional gender jurisprudence, sensitizing future legal practitioners to the nuanced realities of sexual violence.

While advocating for gender-inclusive reform, it is critical to emphasize that expanding protection to male, transgender, and non-binary survivors must not come at the expense of the sustained focus on cisgender women, particularly those from Dalit, Adivasi, Muslim, poor and disabled communities, who continue to face disproportionate structural violence. Historically, women's voices have been marginalized, disbelieved, or silenced in both law and society. Their precarious position must remain central to reform initiatives. A gender-expansive framework must therefore be additive, not substitutive, enhancing the law's scope without fragmenting the struggle for women's safety, autonomy, and dignity.

Conclusion

Indian rape law stands at a critical juncture, while it has moved beyond its colonial origins in language and scope, it continues to carry patriarchal, heteronormative, and caste-coded legacies that restrict access to justice for many survivors. The *Bharatiya Nyaya Sanhita, 2023*,⁴² despite being presented as a decolonial project, largely produces the same exclusions and assumptions entrenched in the Indian Penal Code of 1860.⁴³ This paper demonstrated that legal reform must go beyond terminological change to embrace a substantive vision of justice rooted in the Constitution. It must recognize sexual violence not only as physical violence but as a

⁴² *Bharatiya Nyaya Sanhita, 2023* (India).

⁴³ *Indian Penal Code, 1860* (India).

violation of dignity, autonomy, and equality. This requires moving toward a survivor-centric, gender-inclusive, and caste-aware legal framework, informed by constitutional morality and international human rights norms.

A truly decolonial jurisprudence cannot simply replace one penal code with another, it must unlearn the inherited prejudices of both colonial and patriarchal rule. It must embrace multiplicity of bodies, experiences, and identities and respond to violence with empathy, integrity, and structural change. Only then can Indian law evolve from a punitive instrument into a transformative force for justice.