
GENDER NEUTRALITY IN SEXUAL OFFENCES UNDER BHARATIYA NYAYA SANHITA: A CONSTITUTIONAL AND SOCIAL CRITIQUE

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ABSTRACT

“No man should tolerate injustice, whether it be against himself or against another.”

-Mahatma Jyotiba Phule

This quote highlights the importance of an inclusive legal framework that acknowledges all individuals as potential victims of injustice. The global challenge of gender inequality and the need for gender-neutral sexual violence laws prompt the imperative question: Can justice authentically prevail when it is tainted by bias? This paper will argue that decolonization is nothing but a populist trope, leaving significant loopholes unaddressed. Despite the broader push to shed colonial-era legacies, the legal framework still prioritizes women as the only victims of sexual violence, leaving men, transgender, and non-binary individuals without adequate legal protection. This analysis reveals systemic biases. Thus, from ignoring long-stewing concerns over justice for transgender and queer people, the BNS fails to stand up as a legal system for this day and age. This paper deals with the inadequacies and biases within the Indian legal framework regarding gender-based violence and the protection of marginalized groups. It critically examines how existing laws and institutions fail to adequately address the identity and rights of men, women, and the LGBTQ+ community.

Keywords: Gender Neutrality, Decolonization, Gender Justice, LGBTQ+, Sexual Violence Laws.

INTRODUCTION: CONCEPTUAL UNDERSTANDING OF GENDER NEUTRALITY

*“Law without Justice is blind, Justice without law is lame,
law geared to Justice is order.”*

In essence, gender neutrality in criminal law means that no individual should be judged, protected, or prosecuted based on their gender identity. It is the law’s commitment to fairness in its purest form. The idea is simple yet transformative: legal rights, duties, and protections must apply equally to everyone, irrespective of whether they identify as male, female, transgender, or non-binary. Particularly in the context of sexual offences, gender neutrality challenges the old belief that only women can be victims while men are usually perpetrators. Such stereotypes have long caused legal blind spots, allowing certain victims to remain invisible within the justice system.

In the Indian constitutional framework, this principle finds strong footing in Article 14, which guarantees the “right to equality before the law and equal protection of laws to all persons.”¹ Article 14 does not differentiate based on sex or gender; it is a promise that every individual stands equal before the law and deserves equal access to justice without discrimination.

This commitment to non-discrimination is also mirrored at the international level. Foundational instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) uphold the right to equality before the law and prohibit discrimination on grounds such as sex or gender.² Contemporary developments in human rights law have expanded this understanding further. The Yogyakarta Principles, which consolidate global human rights norms relating to sexual orientation and gender identity, expressly affirm that states must ensure that criminal laws are inclusive and protective of individuals of all gender identities, especially in contexts like sexual violence, where exclusion leads to systemic injustice.³

A sociological understanding of gender neutrality further reveals how vital this principle is for an inclusive justice system. Criminological and victimological studies have consistently

¹ INDIA CONST.1950, art 14.

² Universal Declaration of Human Rights 1948, art 7; International Covenant on Civil and Political Rights 1966, art 26.

³ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), Principle 12.

demonstrated that sexual victimisation is not a phenomenon restricted to women.⁴ Men, transgender persons, and non-binary individuals also suffer from sexual crimes, but their experiences are often overlooked in both public conversations and formal legal discourse. This invisibility is worsened by deep-rooted societal taboos, stigma, and legal structures that either ignore or inadequately acknowledge their victimhood. Consequently, entire groups of survivors are denied justice, contradicting the very objective of criminal law to protect individuals and deter wrongdoing irrespective of gender identity.

Therefore, adopting gender neutrality in criminal law is not merely a technical correction; it is an essential shift towards ensuring that legal systems reflect the realities of all individuals. It respects the dignity of every human being and reaffirms the principle of justice for all, a goal both national and international legal systems are morally and legally bound to achieve.

GENDER NEUTRALITY IN SEXUAL OFFENCE LAW: STILL A QUESTION MARK

The Statement of Objects and Reasons accompanying the Bharatiya Nyaya Sanhita, 2023, articulates an ambitious objective of introducing gender neutrality in select offences, while also enhancing the legal framework to more effectively address crimes against women and children.⁵

The definition of gender has been provided by IPC under section 8, which only includes ‘man’ and ‘woman’, and at the same time, section 10 of IPC has been given a restricted meaning to not include transgender persons.

However, the BNS has broadened the definition of “gender” under Section 10 to encompass transgender individuals. Despite the assertion that seemingly advocates for the inclusive use of pronouns like ‘he’ and its derivatives, a closer analysis exposes a contradiction when it is compared to the language used in the old Indian Penal Code (IPC).

An important question remains: has the BNS cured the lacunae of the lack of gender-neutral provision for rape and other sexual offences in the IPC?

⁴ S. Grover, *Sexual Violence Against Men and Boys*, 35(2) Indian J. Criminology 155 (2023).

⁵ Kanav Narayan Sahgal, ‘*The BNS: A Missed Opportunity for Gender Inclusivity and LGBTQ+ Rights*’ Deccan Herald (Feb 16, 2026, 12:07 AM) <https://www.deccanherald.com/opinion/the-bns-a-missed-opportunity-for-gender-inclusivity-and-lgbtq-rights-2694568>.

GENDER NEUTRALITY IN RAPE LAW

Gender neutrality in rape laws emphasizes that individuals of any gender- men, women, or transgender persons- can be both victims and perpetrators of rape. It reflects contemporary understandings of the nature, consequences, and dynamics of non-consensual penetrative and non-penetrative sexual acts.⁶

The original Section 375 of the Indian Penal Code defined the offence of rape as engaging in sexual intercourse with a woman without her consent. In 2013, the Criminal Law (Amendment) Act⁷ expanded this definition to include acts involving penetration by any object or part of the body into a woman's body, thereby broadening the legal parameters of what constitutes rape. Additionally, Exception 2 to Section 375 of the Indian Penal Code addressed the issue of marital rape, stipulating that sexual intercourse by a husband with his wife was not considered rape unless the wife was under fifteen years of age. The newly introduced Bharatiya Nyaya Sanhita (BNS) Act, which replaces the Indian Penal Code (IPC), marks a notable shift in India's approach to addressing sexual offences. Among its changes, the Act replaces Section 375 of the IPC with Section 63, imposing harsher penalties.

Section 63⁸ of BNS is as follows:

“A person commits ‘rape’ if they:

- Penetrate their penis, to any extent, into the vagina, mouth, urethra, or anus of another person, or coerce them to do so with themselves or another individual.*
- Insert, to any extent, any object or part of the body other than the penis into the vagina, urethra, or anus of another person, or coerce them to do so with themselves or another individual.*
- Manipulate any part of another person's body to cause penetration into their vagina, urethra, anus, or any other part of their body, or coerce them to do so with themselves or another individual.*

⁶ Philip N.S. Rumney, *In Defence of Gender Neutrality Within Rape*, 6(1) Seattle J. Soc. Just. 481 (2007).

⁷ Criminal Law (Amendment) Act 2013 <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> last visited Feb 16, 2026).

⁸ Bharatiya Nyaya Sanhita, Section 63, No. 45, Acts of Parliament, 2023 (India).

- Apply their mouth to the vagina, anus, or urethra of another person, or coerce them to do so with themselves or another individual, under any of the following circumstances:

1. Against the individual's will.
2. Without the individual's consent.
3. With the individual's consent obtained through coercion by threatening death or injury to themselves or someone they care about.
4. With the individual's consent, knowing that the person is not their spouse and that their consent is based on the belief that they are lawfully married to someone else.
5. With the individual's consent obtained while they are unable to comprehend the nature and consequences of their consent due to mental incapacity, intoxication, or the administration of stupefying or harmful substances.
6. With or without the individual's consent, if they are under the age of eighteen.
7. When the individual is unable to communicate consent.”

A closer analysis reveals that, apart from raising the age threshold from ‘fifteen years’ to ‘eighteen years’ in Section 63 Exception 2 in accordance with the landmark Supreme Court judgment in *Independent Thought v. Union of India and Anr.*⁹ (2017 SC), there have been no significant changes in rape laws during the transition from the IPC to the BNS. Accordingly, the Bharatiya Nyaya Sanhita (BNS) continues to adopt a gender-specific framework, consistent with the approach taken under the Indian Penal Code (IPC). According to section 63 of BNS, only a woman can be a victim of Rape. While the BNS expands the definition of gender to include transgender persons, it remains silent on addressing sexual assault against them.

Gender neutrality in Indian rape laws was dealt with for the first time in the case of *Sudesh Jhaku v KC Jhaku*.¹⁰ In this case, it was observed that the sexually assaulted men should be given the same protection under the law as given to the female victims. The 172nd Report of the Law Commission of India recommended the reform of rape laws to ensure a gender-neutral

⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800

¹⁰ *Jhaku v KC Jhaku*. 1988 Cri LJ2428.

and unbiased legal framework. The most recent development in the discourse on gender neutrality in rape laws is the introduction of a bill by Mr. KTS Tulsi, an Indian politician and a senior advocate in the Supreme Court of India, which seeks to make rape laws gender neutral which has not been passed yet.

A new code has been introduced, yet gender neutrality in rape laws remains unachieved.

MALE RAPE: A GAP THAT HAS NOT BEEN BRIDGED

The offence of ‘rape’ under the Indian Penal Code (IPC) is explicitly gendered, defining the perpetrator exclusively as a male and the victim exclusively as a female. The only provision across statutes that penalises rape of an adult man is section 377,¹¹ which does not find a place in the BNS. Consequently, the BNS fails to recognize or penalize acts of sexual violence committed against male victims, thereby reinforcing a gender-exclusive legal framework. Indian society, deeply rooted in patriarchy, has historically been resistant to the idea of gender-neutral laws. While crimes against women were once pervasive and necessitated stringent laws to ensure protection and justice, the societal and legal landscape has shifted significantly over the years. Even after this transition, laws designed with women as the sole victims of sexual offences often overlook the possibility of women being perpetrators and men or other genders being victims. This imbalance has led to an increase in false allegations and misuse of laws, sparking debates about the violation of the constitutional principle of equal protection under the law.

The definition of “rape” under the Indian Penal Code (IPC) was first codified in 1860 and, until 2013, was confined to “penile-vaginal” intercourse. This definition and subsequent amendments remain gender-specific, identifying only women as victims and men as offenders. The Supreme Court, in *State of Punjab v. Ramdev Singh*¹² described rape as a crime not only against an individual woman but against society as a whole, violating the fundamental right to life and dignity under Article 21 of the Constitution. While this observation highlighted the gravity of the crime, it inadvertently reinforced the stereotype of women as the only victims, disregarding the reality of sexual violence faced by men and other genders.

¹¹ Navtej Singh Johar v. Union of India (2018) 10 SCC 1

¹² State of Punjab v. Ramdev Singh (2004) 1 SCC 421.

Global data paints a starkly different picture. For instance, a 2013 report by the UK Ministry of Justice revealed that approximately 85,000 women and 12,000 men were raped in 2012¹³. Despite such evidence, Indian laws continue to marginalize male and non-female victims of sexual violence. Under Section 375 IPC, the offence of rape is limited to acts committed by men against women, failing to address the victimization of men by any gender or sexual violence against non-binary individuals.

This gender-specific legal framework perpetuates a significant gap in justice. It not only denies protection to male and other-gendered victims but also stigmatizes them, often discouraging them from reporting crimes. Moreover, the misuse of such laws has led to the weaponization of legal provisions, but false cases damage lives and reputations. India, as the world's largest democracy, must recognize the pressing need for reforms that ensure equal protection for all individuals, irrespective of gender. Gender-neutral laws are essential to uphold justice, protect bodily integrity, and address the evolving dynamics of sexual violence fairly and inclusively.

OMITTING SECTION 377- A THOUGHTLESS APPROACH IN BNS

Legislators often overlook not only males but also transgender individuals when addressing crimes like rape and sexual assault. A comprehensive amendment to criminal law is urgently needed to ensure equal legal protections for all victims, regardless of gender.

Clause 2 of the BNS claims that pronouns like “he” are to be used inclusively, yet it offers no substantive inclusion of transgender individuals in any practical shape or form. A Control+F on the BNS document reveals the mention of transgender only in the definition – section 2(10) and is completely absent from the rest of the document, highlighting a lack of genuine commitment to inclusivity.

The Bharatiya Nyaya Sanhita (BNS) was introduced with the promise of prioritizing victim safety and addressing sexual violence comprehensively. However, its omission of Section 377 from the Indian Penal Code (IPC) undermines this commitment by leaving transgender individuals, men, and animals unprotected. Before the introduction of the Bharatiya Nyaya Sanhita (BNS), Section 377 of the Indian Penal Code (IPC) provided a broad framework to

¹³ Kerti Sharma and Shipra Tiwari, 'Should Sexual Offences Be Gender Neutral' *SCC Online Times* (25 November 2024) https://www.sconline.com/blog/post/2021/05/27/should-sexual-offences-be-gender-neutral/#_ftn29

address “unnatural offences,” covering non-consensual sexual acts involving men, transgender individuals, and even animals. While the Supreme Court’s 2018 judgment decriminalised consensual same-sex relationships under this section, its provisions continued to protect against non-consensual acts. However, the BNS has entirely omitted Section 377 without introducing an equivalent provision, leaving these groups without adequate legal protection.

This omission also marks a failure to fulfil the promise of gender-neutral sexual offence laws in India. Despite the need for an inclusive framework, the BNS retains a gender-biased approach, recognizing only women as victims of rape while excluding men and transgender individuals. Such a narrow perspective disregards the realities of sexual violence experienced by diverse genders, perpetuating systemic inequities and undermining the principle of equal justice.

Furthermore, the exclusion of safeguards against bestiality creates significant legal loopholes, weakening protections for animals. This lack of inclusivity and failure to modernise sexual offence laws as promised has drawn widespread criticism from legal experts, activists, and advocates for marginalized communities.

*Navtej Johar vs the Union of India*¹⁴, The Supreme Court of India had ‘read down’ section 377, and not “struck down”, implying that consensual sex between people of the same gender and transgender persons was no longer punitive, but the Section was retained since it was the only provision that covered the rape of men, transpersons, and animals¹⁵. With the omission of Section 377 in the Bharatiya Nyaya Sanhita and the absence of any corresponding provision, male and transgender individuals are left without explicit legal protection against acts of rape or non-consensual sexual assault. In India, rape laws are not gender-neutral. Section 376 of the Indian Penal Code criminalized rape only against women. After Section 377 was removed from the Bharatiya Nyaya Sanhita, sexual violence against men and transgender persons ceased to be an offence from July 1, 2024.

The National Crime Records Bureau (NCRB) of India documented 826 cases under IPC

¹⁴ Navtej Singh Johar v Union of India AIR 2018 SC 4321

¹⁵ Alisha Dutta, ‘Bharatiya Nyaya Sanhita Has No Section Dealing with Rape of Men, Transgender Persons’, The Hindu, (Feb 16, 2026, 12:03 am IST) <https://www.thehindu.com/news/national/gang-rape-of-up-man-highlights-need-for-section-377-in-bns-bill/article68320575.ece#:~:text=The%20alleged%20suicide%20of%20a%2023-year-old%20man%2C%20hours,deals%20with%20rape%20of%20men%20and%20transgender%20persons.>

Section 377 in 2020 and 955 cases in 2021. Despite these figures, it is widely acknowledged that sexual offences against men and transgender individuals remain significantly under-reported.¹⁶

The Transgender Persons (Protection of Rights) Act, 2019, under Chapter 8, Section 18(d), prescribes a punishment of imprisonment ranging from six months to two years, along with a fine, for acts of sexual abuse against transgender individuals. This lenient sentencing starkly contrasts with the penalties for similar offences against cisgender women, which can extend to life imprisonment. This disparity highlights a significant oversight by the legislature, effectively devaluing the seriousness of sexual violence against transgender persons and perpetuating systemic discrimination. The categorization of sexual abuse against transgender individuals as a petty offence not only undermines their dignity but also violates the constitutional principles of equality and non-discrimination. Incorporating gender-neutral laws into the Indian Penal Code would ensure uniform protection for all victims of sexual offences, irrespective of their gender. Such a step would align with constitutional provisions, foster inclusivity, and reflect a commitment to equal justice for all citizens.

Apart from this, Cases registered before July 1, under Section 377, will continue to be governed by the IPC, while those filed after that will not. The coexistence of two parallel legal systems will result in cases of a similar nature being subject to divergent punitive outcomes.

The introduction of the Bharatiya Nyaya Sanhita (BNS) presented a pivotal opportunity to align its principles with those established in the NALSA and Navtej Singh Johar judgments, thereby extending legal protections for transgender individuals to also include gay individuals.

For instance, the definition of rape under Section 63 of the Bharatiya Nyaya Sanhita could have been broadened by substituting the term “woman” with a gender-neutral term, thereby extending protections to transgender individuals with diverse sex characteristics as well as men who have been subjected to sexual assault by other men. Alternatively, the post-Navtej Singh Johar iteration of Section 377 of the Indian Penal Code, which criminalized bestiality, non-consensual sexual acts between men, and other forms of ‘unnatural’ sexual conduct involving minors—could have been preserved, with language amendments to explicitly safeguard

¹⁶ Karishma Kotwal, ‘No BNS Sec for Sexual Offences on Men, Transgenders & Animals’ The Times of India (Feb 16, 2026, 11:56 PM) <https://timesofindia.indiatimes.com/city/indore/bharatiya-nyaya-sanhita-bns-excludes-sexual-offences-against-men-transgenders-animals/articleshow/111546043.cms>.

LGBTQ+ individuals, children, animals, and others whose protection is not comprehensively addressed in other provisions of the BNS.

Such an amendment would have not only ensured the Bharatiya Nyaya Sanhita's genuine inclusivity in addressing sexual violence experienced by LGBTQ+ individuals and others but also upheld the ethos and spirit of the doctrine of progressive realization of rights.

GENDERED MISUSE AND OVERREACH: SECTION 69 ANALYSIS

Section 69 of the Bharatiya Nyaya Sanhita poses a dual challenge, as establishing the intentions of both the accused and the complainant is likely to be complex. A significant difficulty in implementing this provision lies in proving the accused's "intention to marry," a term that remains broadly defined and may be exploited to settle personal vendettas or in disputes arising from consensual relationships that have deteriorated. In a context where conviction rates in cases involving consensual relationships are already below 30 percent, this provision is likely to generate increased litigation, further burdening an already strained judicial system.¹⁷

Section 69 provides that *"Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*

Explanation, "deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity."

This section is new unprecedented as the Indian Penal Code did not have a specific provision for sexual intercourse by concealing facts or by deceit. Prior to BNS such cases were booked under section 90 of IPC which mentioned that a consent is not a consent if it is given under the fear of injury or under a misconception of fact. Consent plays a vital role, from the very beginning, in such cases. With the introduction of Section 69 in BNS women can claim to have consented sexual intercourse and filed a case against the partner if they failed to marry under any circumstances.

¹⁷ Vaibhav Gandhi and Muskan Gandhi, 'From Promise to Punishment: Analysis Section 69 of BNS, 2023' 6 International Journal for Multidisciplinary Research (IJFMR) 1, 3, (2024)

In effect, Section 69 criminalizes the termination of relationships, exposing men to potential harassment if the relationship does not culminate in marriage.

Although Section 69 of the BNS is a recent addition to the Indian legal framework, but cases involving false promises of marriage have been addressed by the judiciary for decades. Recognising that each case is shaped by unique circumstances, the judiciary has taken significant steps to handle such matters with sensitivity and nuance.

In a recent case of *XXXX v. State of Madhya Pradesh*,¹⁸ Supreme Court held that there was no rape when “Complainant was a grown-up lady about ten years older than the appellant. She possessed sufficient maturity and intelligence to comprehend the consequences of both moral and immoral actions to which she consented during the subsistence of her previous marriage. Indeed, the case was characterized by a betrayal of her husband.”

In the case of *Naim Ahamed v. State (NCT of Delhi)*¹⁹ SC observed that it would be a folly to treat every breach of promise to marry as a false promise and to prosecute a person for the offence of rape under Section 376 IPC. The bench of Justices Ajay Rastogi and Bela M Trivedi also remarked” One cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him from fulfilling his promise”. And finally, the bench of Ajay Rastogi and Justice Trivedi acquitted a man of rape charges in a case involving a married woman with three children who engaged in an extramarital relationship with the accused and subsequently alleged rape after he refused to marry her.

Furthermore, the law appears to perpetuate the notion that, despite women’s advancements, independence, and achievements across various professional fields, they remain incapable of exercising autonomous decision-making regarding sexual matters related to their bodies and dignity. It implicitly suggests that women may be coerced into sexual acts through promises of marriage, employment, or promotion. This perspective neglects to recognize that women can also occupy positions of power or influence, whereby they may induce or make false promises to men within the context of consensual sexual relationships.

¹⁸ *XXXX v State of Madhya Pradesh* [2024] 3 SCR 309

¹⁹ *XXXX v State of Madhya Pradesh* [2024] 3 SCR 309

The original statement leans towards gender bias by implying that women are predominantly victims who lack agency in sexual matters, while overlooking the possibility of men being manipulated in similar situations. This one-sided perspective reinforces stereotypes about women's vulnerability and men's culpability, failing to recognize the potential for mutual responsibility or wrongdoing.

In addition to that, the ambiguous legislative intent behind the insertion of this provision marks a threat to society. The law lacks a precise definition regarding the minimum duration of a relationship required under this section for a woman to bring charges against a man for failing to fulfill a promise of marriage, promotion, job, or inducement. In the absence of clear definitions, any man involved in a relationship with a woman, be it long-term, short-term, or a live-in arrangement, may be vulnerable to prosecution under this section for alleged false promises of marriage.

Under this section, the punishment is severe, 10 Years imprisonment with a fine, and the offence is cognizable and non-bailable. On a mere complaint by a woman under sexual offences, the police can take swift action, leading to the immediate arrest of the accused and their remand for further investigation.

This provision effectively empowers a woman's statement to initiate prosecution against a man, regardless of whether false promises of marriage, employment, or inducement were actually made. Even if a man possesses evidence to prove his innocence, false allegations, driven by revenge or malice, can irreparably damage his reputation, social standing, and dignity.

The absence of safeguards to prevent misuse of the law not only risks unjust persecution of innocent men but also undermines the credibility of genuine victims. A balanced legal framework is essential to ensure justice while preventing exploitation of such provisions.

In addition, the misuse of legal provisions by women remains a significant concern that warrants careful attention in a developing society. Section 69 of the Bharatiya Nyaya Sanhita represents a potentially flawed effort that may inadvertently grant women disproportionate legal advantage over men, raising concerns about the erosion of men's fundamental rights. Similarly, Section 498A of the Indian Penal Code, enacted to safeguard women from marital cruelty, has been subject to misuse, resulting in the victimization of innocent families.

According to the *NCRB (National Crime Records Bureau) report 2022*²⁰, The number of registered cases of crimes against women has increased; the majority of cases involved ‘cruelty of the husband or his relatives.’ As per the NCRB detailed report in 2022, there is a substantial exacerbation/ hike of crimes reported against women.²¹

According to the National Crime Records Bureau (NCRB) reports, the number of registered cases of crimes against women increased from 111,549 in 2020 to 136,234 in 2021, and further to 140,019 in 2022. The 2022 report also reveals that 36,715 cases were closed as false, while 41,086 cases were dismissed due to mistakes of fact or law or classified as civil disputes. The court

disposal data for crimes categorized under cruelty by husband and relatives indicates a conviction rate of 17.7%. Of the total 227,778 males charge-sheeted, only 12,757 resulted in convictions.²²

The 2022 NCRB report indicates that 4,163 males were discharged and 62,309 acquitted in cases related to cruelty by husbands and relatives. These data points to a substantial number of men being falsely implicated. In some cases, women reportedly file complaints to extort money from their husbands or to harass their in-laws. The misuse of Section 498A has become so widespread that the Supreme Court of India noted that, while the provision was intended as a protective shield, it has been exploited as an “assassin’s weapon.” The Court further cautioned that such misuse could unleash a form of “legal terrorism.”²³

The introduction of Section 69 under the *Bhartiya Nyaya Sanhita (BNS)* raises critical concerns about gender bias and potential constitutional violations. While aimed at protecting women from deceit, the provision undermines the principles of equality and fairness guaranteed under Articles 14 and 15 of the Constitution. It presumes women are inherently vulnerable and

²⁰ National Crime Records Bureau, *Crime in India – 2022* (2022)

<https://www.drishtiiias.com/pdf/1702310368.pdf#:~:text=A%20total%20of%20over%2058%2C00%2C000%20cognizable%20crimes%20were,from%20445.9%20in%202021%20to%20422.2%20in%202022> (last visited Feb 16, 2026,)

²¹ Preeti Pathak, ‘*Is The New Law Under Section 69 Of The Bhartiya Nyaya Sanhita (BNS) Gender Biased And Does It Violate Articles 14 And 15 Of The Constitution Of India?*’ Legal Service India, (Feb 16, 2026, 11:53 PM) <https://www.legalserviceindia.com/legal/article-17118-is-the-new-law-under-section-69-of-the-bhartiya-nyaya-sanhita-bns-gender-biased-and-does-it-violate-articles-14-and-15-of-the-constitution-of-india-.html>.

²² *Id.*

²³ *Sushil Kumar Sharma v Union of India, Writ Petition (Civil) 141 of 2005.*

incapable of making informed decisions about their bodies, overlooking their advancements in modern society.

By framing the law to assume that only men deceive women into sexual relationships, it reinforces outdated gender stereotypes and ignores the possibility of women in positions of power making false promises to men. This one-sided approach fails to reflect contemporary realities and risks perpetuating inequality under the guise of protection.

The history of misuse of laws such as Section 498A of the Indian Penal Code and domestic violence provisions further underscores the need for a gender-neutral framework. A balanced approach is essential to safeguard genuine victims of deceit and exploitation, irrespective of gender, while preventing misuse that could harm the innocent. This law exhibits clear gender bias, discrimination, and prejudice, underscoring the urgent need for its amendment.

However, **on 20th November 2024, Justices B.V. Nagarathna and Nongmeikapam Kotiswar Singh, in the case of *Prashant v. State of New Delhi*, held that:**

“The relationship between the parties was cordial and consensual in nature. A mere dissolution of a relationship between consenting individuals cannot warrant the initiation of criminal proceedings. What began as a consensual relationship cannot be retrospectively construed as criminal merely because it did not culminate in marriage.”

Again, Hon’ble Justice Ananya Bandhyopadhyay in the case of ***Biswanath Murmu v. The State of West Bengal***²⁴ held that *“The relationship between the parties was indubitably consensual. The victim lady being an adult was aware of the consequences of such relationship and denial on the part of the appellant to marry her would entail wide ramification.”*, further the Calcutta High Court held when an adult victim knowingly and willingly consented to sexual relations with a man, the man cannot later be held guilty for committing the offence of rape on the pretext of marriage.

From the preceding discussion, it can be inferred that the government’s effort to make rape laws gender-neutral has already been overlooked. This paper now focuses on examining other sexual offence laws.

²⁴ Biswanath Murmu v. The State of West Bengal., C.R.A. 562 of 2011

CONSTITUTIONAL AND JURISPRUDENTIAL ANALYSIS

The question of gender neutrality in sexual offences under the Bharatiya Nyaya Sanhita raises significant constitutional concerns. The Indian Constitution guarantees equality and dignity to all citizens, yet the existing legal framework in the BNS seems to neglect these foundational values. It is important to understand the impact of this legal shortcoming by closely examining the constitutional provisions and judicial interpretations that form the backbone of Indian equality law.

To begin with, Article 14 of the Indian Constitution promises every person equality before the law and equal protection of the laws within the territory of India.²⁵ This principle is fundamental to the Indian legal system, aiming to eliminate arbitrariness and ensure fairness for every individual. However, when laws dealing with sexual offences exclusively recognise women as victims and exclude men and transgender persons from similar protection, it creates an obvious imbalance. By limiting the category of recognised victims, the law denies a section of society the equal protection it is supposed to guarantee. This selective recognition of victimhood results in clear discrimination, which is not justified by any reasonable classification or intelligible differentia.

Article 15 reinforces the commitment to equality by prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth.²⁶ While this article permits special provisions for women and children, it was never intended to enable the systematic exclusion of other genders from legal protection. In fact, the constitutional intention was to create positive safeguards for historically disadvantaged groups, not to deny rights to others. When male and transgender victims of sexual violence are denied equal protection of the law, it amounts to discrimination on the ground of sex, which is explicitly prohibited. This selective application of protective laws contradicts the spirit of Article 15 and results in unequal access to justice.

Another fundamental provision is Article 21, which guarantees every individual the right to life and personal liberty, encompassing the right to live with dignity.²⁷ The Supreme Court of India has consistently expanded the interpretation of Article 21 to include various facets of human dignity and personal autonomy. Sexual violence is one of the most serious violations of

²⁵ INDIA CONST.1950, art 14.

²⁶ INDIA CONST.1950, art 15.

²⁷ INDIA CONST.1950, art 21.

personal dignity, and when legal frameworks fail to protect certain sections of the population from such offences, it effectively denies them the protection of their fundamental rights under Article 21. The denial of equal protection to male and transgender victims in the BNS therefore not only ignores equality and non-discrimination but also violates their right to live a life free from violence and humiliation.

Indian jurisprudence over the last decade has increasingly recognised gender diversity and the rights of marginalised gender identities. The landmark judgment in **National Legal Services Authority v Union of India** marked a significant step towards acknowledging the rights of transgender persons by granting them the right to self-identify their gender and enjoy equal protection of the law.²⁸ Following this, the Supreme Court in *Navtej Singh Johar v Union of India*²⁹ struck down Section 377 of the Indian Penal Code to the extent it criminalised consensual sexual activity between adults of the same sex, reaffirming the constitutional protection of sexual autonomy and dignity for LGBTQ+ individuals.³⁰ The court observed that constitutional morality must guide legal interpretations and ensure the protection of all minority groups irrespective of majoritarian moral views.

Beyond these landmark judgments, there have been other cases where Indian courts have upheld the rights of transgender persons in the context of employment, education, and healthcare. For example, the Madras High Court in *Arun Kumar v Inspector General of Registration*³¹ recognised the right of a transwoman to be treated as a bride under the Hindu Marriage Act, expanding the interpretation of legal rights for transgender individuals in personal law spheres.³² These developments indicate a clear trajectory within the judiciary towards an inclusive and expansive interpretation of fundamental rights.

Apart from judicial pronouncements, several expert bodies have also highlighted the necessity of gender-neutral provisions in sexual offences. The Justice Verma Committee, which was formed after the Nirbhaya case to recommend amendments to criminal law, acknowledged in its report that sexual violence affects individuals irrespective of their gender. The Committee expressly suggested that sexual offences should be made gender-neutral to extend protection

²⁸ National Legal Services Authority v Union of India (2014) 5 SCC 438.

²⁹ Navtej Singh Johar v Union of India (2018) 10 SCC 1.

³⁰ *Id.*

³¹ Arun Kumar v Inspector General of Registration (2019) 4 Mad LJ 34.

³² *Id.*

to men and transgender individuals as well.³³ Similarly, the 172nd Law Commission Report also recognised the need for gender-neutral rape laws, proposing amendments to the Indian Penal Code to address sexual violence in a gender-inclusive manner.³⁴ Despite these authoritative recommendations, the BNS has failed to incorporate these changes, reflecting a legislative unwillingness to adapt to contemporary social realities and constitutional mandates.

Furthermore, international human rights instruments also place an obligation on the Indian state to provide equal legal protection to all individuals. India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which emphasise non-discrimination and equal protection before the law. Ignoring these obligations places India in contradiction with international human rights standards and weakens its commitment to gender justice on a global platform.

The inconsistency between judicial progress and legislative inaction creates a troubling scenario. This gap between judicial ambition and legislative action has real-world consequences, as seen in recent cases. In June 2024, in Gorakhpur, a 23-year-old man allegedly gang-raped by four men subsequently committed suicide. His ordeal could only be charged under the repealed Section 377 IPC, not under the BNS, as no equivalent provision exists.³⁵ This stark omission not only deprives him legal protection but sends a dangerous message about the vulnerability of male and transgender survivors. In September 2024, the Himachal Pradesh High Court held that Section 69 of BNS, which addresses false promise of marriage, applies only when the victim is a woman.³⁶ A transgender claimant was explicitly excluded from this remedy, reinforcing the law's discriminatory stance.

These incidents expose not only legal gaps but lived injustices: victims left without justice and survivors' traumas rendered invisible. They highlight the disconnect between judicial recognition of constitutional rights and legislative failure to codify protections.

³³ Justice Verma Committee, 'Report of the Committee on Amendments to Criminal Law' (2013) 73-74.

³⁴ Law Commission of India, '172nd Report on Review of Rape Laws' (2000).

³⁵ Alisha Dutta, 'Bharatiya Nyaya Sanhita Has No Section Dealing with Rape of Men, Transgender Persons', *The Hindu*, (22 June 2024, 12:10 am IST) <https://www.thehindu.com/news/national/gang-rape-of-up-man-highlights-need-for-section-377-in-bns-bill/article68320575.ece#:~:text=The%20alleged%20suicide%20of%20a%2023-year-old%20man%2C%20hours,deals%20with%20rape%20of%20men%20and%20transgender%20persons.>

³⁶ LawBeat, <https://lawbeat.in/news-updates/transgenders-cannot-invoke-rape-false-promise-marriage-provision-section-69-bns> accessed 19 July 2025.

Moreover, civil society experts caution that the BNS sends an alarmingly regressive message. An article in *The Hindu* warned of a "legal vacuum" for male and transgender survivors.³⁷ Similarly, activists have described the BNS as a betrayal of constitutional guarantees and human rights principles.

In conclusion, the exclusion of men and transgender individuals from the sexual offence provisions under the BNS stands in stark contrast to Articles 14, 15, and 21. It defies judicial recognition of gender diversity and blatantly ignores authoritative committee recommendations. Real-world incidents, such as the Gorakhpur case and judicial exclusion in Himachal Pradesh, underscore the urgent need for legislative reform. True gender justice requires aligning the BNS with constitutional and human rights norms, ensuring legal protection for all individuals, regardless of gender identity.

CONCLUSION

In conclusion, this paper underscores how failing to seize the opportunity to reform laws on critical issues, like sexual harassment, has instead entrenched the colonial legacies that continue to shape our current status quo. The new codes, rather than challenging the past, have merely reinforced its enduring shadows. Beyond the specific provisions discussed above, arguably the most significant challenge to the project of decolonization lies in the absence of substantive reforms in the enforcement and implementation of the laws. The emphasis on renaming the Indian Penal Code as *Bharatiya Nyaya Sanhita* appears symbolic, doing little to dismantle the colonial foundations upon which the system was built. Despite the rhetoric of decolonization, large sections of the old laws remain intact, merely rearranged rather than reimagined to address contemporary realities.

Critical gap persists in the laws' failure to ensure gender justice, particularly in bridging the divide on gender neutrality in cases of sexual harassment and violence. The reforms overlook the experiences of women, trans, and queer individuals, perpetuating the same exclusions and biases embedded in the old framework. By reinforcing rather than challenging entrenched

³⁷ Alisha Dutta, 'Bharatiya Nyaya Sanhita Has No Section Dealing with Rape of Men, Transgender Persons', *The Hindu*, (Feb 16, 2026 12:10 am IST) <https://www.thehindu.com/news/national/gang-rape-of-up-man-highlights-need-for-section-377-in-bns-bill/article68320575.ece#:~:text=The%20alleged%20suicide%20of%20a%2023-year-old%20man%2C%20hours,deals%20with%20rape%20of%20men%20and%20transgender%20persons.>

structures, these laws miss the opportunity to create an inclusive and equitable justice system, leaving the promise of true decolonization and gender justice unfulfilled.