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# TOWARDS GENDER-NEUTRAL CRIMINAL JUSTICE IN INDIA: CONSTITUTIONAL, LEGISLATIVE, AND JUDICIAL PERSPECTIVES

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Harnoor Grewal, Army Institute of Law, Mohali

## ABSTRACT

Gender neutrality in criminal law is essential to fulfil the constitutional guarantees of equality, dignity, and equal protection of the law. However, India's criminal justice framework has historically been shaped by patriarchal and binary assumptions that portray men as perpetrators and women as victims, while largely excluding transgender, non-binary, and male survivors from adequate legal recognition and remedies. This article critically examines the development and limitations of gender neutrality in Indian criminal law, with particular reference to sexual offences, domestic violence, workplace harassment, and offences against transgender persons.

The article analyses the constitutional foundations of gender-neutral legislation under Articles 14, 15, and 21 of the Constitution, as well as the relevance of India's international Human Rights obligations. It traces judicial and legislative developments through decisions such as *Smt. Sudesh Jhaku v. K.C.J.*, *Sakshi v. Union of India*, *NALSA v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Joseph Shine v. Union of India*. It further examines the recommendations of the Law Commission of India's 172nd Report, the Justice J.S. Verma Committee Report, the Criminal Law (Amendment) Bill, 2019, and the gendered structure of the Bharatiya Nyaya Sanhita, 2023.

Through a comparative analysis of the legal frameworks of the United States, the United Kingdom, Canada, and the Philippines, the article identifies models for expanding the scope of sexual-offence laws beyond gender-specific victim and perpetrator categories. It also highlights the continuing disparities under provisions relating to rape, domestic violence, workplace harassment, and sexual abuse of transgender persons, including the inadequate punishment prescribed under the Transgender Persons (Protection of Rights) Act, 2019.

The article concludes by recommending comprehensive gender-neutral redrafting of sexual offences, uniform punishment standards, express recognition of transgender and non-binary persons, clearer definitions of consent and sexual assault, periodic review of gender-specific laws, and

institutional sensitisation of the police, judiciary, and society. It contends that protecting women and advancing gender neutrality are not competing objectives; rather, an inclusive criminal law can strengthen protection for all survivors while ensuring that accountability is determined by the nature of the offence and not by the gender identity of the victim or perpetrator.

**Keywords:** Gender neutrality; Indian criminal law; Bharatiya Nyaya Sanhita, 2023; sexual offences; transgender rights; constitutional equality; Article 14; Article 21; gender justice.

## INTRODUCTION

In simple terms, “Gender neutrality is the idea that policies, language and other social institutions should avoid distinguishing roles according to people’s sex or gender, in order to avoid discrimination arising from the impression that there are social roles for which one gender is more suited than another.” There is a flawed misunderstanding of the role of gender in our country as stereotypical ideas such as only men can be protectors or breadwinners and women can be nurturers and homemakers and transgenders are have-nots etc. Due to such beliefs most of Indian legislations are gender specific, for example, family laws are based on patriarchal, patrilineal and patrilocal society. While the criminal laws in the country has assigned the role of preparator to men and role of victim to women and transgenders are not kept in the vicinity of any role with special reference to sexual offences and cruelty. Whenever the gender-neutral laws have knocked the door of law makers, they have been never entertained because according to them, the sexual offences against women only covers majority. Morally or legally, justice is shattered when on the pretext of preserving majority rights, the other minority class rights are disregarded.

In words of American political activist, Gloria Steinem: “*A gender- equal society would be one where the word ‘gender’ does not exist where everyone can be themselves*”. The binary understanding of the word ‘gender’ is deeply rooted in the mindset of the society but indeed the essence of the term lies in the fact that it comprises of male, female and transgender. Gender neutral laws seek to grant equal sanction and opportunity to all the genders without negative discrimination.<sup>1</sup>

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<sup>1</sup> Prithviraj Chavan, “Gender Neutrality in New Criminal Laws in India: A Critical Study with Reference to Sexual Offences” 7 *International Journal for Multidisciplinary Research* 252(2025).

## CONSTITUTIONAL PROVISIONS

Our Constitution opens with the Preamble which promises its citizens to secure their social, economic and political justice along with equality of status and opportunity. This assurance has been turned into guarantee in the form of Fundamental Rights. Articles 14, 15 and 16<sup>2</sup> bestows equality to all-in-one form or the other. In other words, Article 14 can be considered as genus and Articles 15 and 16 acts like species. Article 14<sup>3</sup> enumerates that the State shall not deny to any person equality before law and equal protection of laws. The concept of reasonable classification or ‘equality among equals’ is also embedded in a hidden way in this provision. Article 15 of the Constitution protects the citizens from discrimination on various grounds, including sex. Article 15(3)<sup>4</sup> acts as an exception to Article 14 and 15(1) and (2) under which state is not prevented from making any special provision for betterment of women and children. The basic objective was to empower women and to reduce the gap of inequality between men and women. Besides, India is a signatory to several international covenants on the rights of individuals, such as *The Universal Declaration of Human Rights, 1948*<sup>5</sup>, *The International Covenant on Civil and Political Rights, 1966*<sup>6</sup> and *The International Covenant on Economic, Social and Cultural Rights, 1966*<sup>7</sup>, all of which upholds the inalienable right of every person to equality and human dignity.<sup>8</sup>

## DEVELOPMENT TOWARD GENDER NEUTRAL CRIMINAL LAWS

- **SMT. SUDESH JHAKU V. K.C.J. AND OTHERS<sup>9</sup>**

Argument for a gender-neutral rape law can be traced back to 1996 where Justice Jaspal Singh of the Delhi High Court said-

*“Men who are sexually assaulted should have the same protection as female victims, and women who sexually assault men or other women should be as liable for conviction as conventional rapists. Considering rape as a sexual assault rather than as a special crime*

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<sup>2</sup> The Constitution of India.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Universal Declaration of Human Rights, 1948.

<sup>6</sup> The International Covenant on Civil and Political Rights, 1966.

<sup>7</sup> The International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>8</sup> Adarsh Mishra, “Gender Neutrality: Needs & Practical Enforcement” 10 *Social Science Research Network* 466(2025).

<sup>9</sup> 1998 Cri LJ 2428.

*against women might do much to place rape law in a healthier perspective and to reduce the mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions.”*

The Court observed that crime is a dynamic concept that evolves with the country's economic, political, and social changes. While considering the expansion of the definition of rape to include penetration by any part of a man's body or foreign objects, the Court suggested that if the Legislature revisits the law, it should also consider defining rape in gender-neutral terms.

The Court cited an article of *Camille E Legrand, Rape and Rape Laws: Sexism in Society and the Law*<sup>10</sup>. Paragraph quoted in the judgement:

*“Men who are sexually assaulted shall have the same protection as female victims, and women who sexually assault men or other women should be liable for conviction as conventional rapists. Considering rape as a sexual assault rather than as a special crime against women might do much to place rape law in a healthier perspective and to reduce the mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions.”*

It emphasised that sexually assaulted men deserve the same protection as women, and that women who rape men or other women should also be held criminally liable.

- **SAKSHI V. UNION OF INDIA**<sup>11</sup>

The Court's attention was drawn to Sections 375 and 376<sup>12</sup> of the Indian Penal Code (IPC), which deal with rape. It was noted that these provisions were not adequate to address the sexual abuse of children and were inconsistent with the changing social context. The Supreme Court referred the matter to the Law Commission of India, directing it to examine the issue and submit recommendations.

- **LAW COMMISSION OF INDIA – 172ND REPORT**<sup>13</sup>

The Report on the Review of Rape Laws recommended expanding the definition of rape and

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<sup>10</sup> Camille E Legrand, *Rape and Rape Laws: Sexism in Society and the Law*, 61(3) *California Law Review* 919, 941(1973).

<sup>11</sup> (2004) 5 SCC 518.

<sup>12</sup> The Indian Penal Code (Act 45 of 1860).

<sup>13</sup> Law Commission of India, “172nd Report on Review of Rape Laws” (January 2000).

making it gender neutral. It proposed substituting the term “rape” with “sexual assault” to include male and child victims as well. The definition of ‘sexual assault’ recommended in the report did not use the word ‘man’ or ‘woman’ rather it used the word ‘person’.

- **CRIMINAL LAW (AMENDMENT) BILL, 2012<sup>14</sup>**

Based on the Law Commission’s recommendations, this Bill was introduced to amend provisions of the IPC, CrPC, and Indian Evidence Act related to sexual offences. However, before it could be enacted, the *Nirbhaya Case*<sup>15</sup> occurred on 16 December 2012, where a young woman was brutally gang-raped in Delhi. It shook the entire nation and the focus on women security and enhanced punishment for rape against woman became stronger than ever.

- **JUSTICE J.S. VERMA COMMITTEE<sup>16</sup>**

In response to the Nirbhaya incident, the Government established this Committee to recommend reforms for speedy trials and stricter punishments in sexual offence cases. The Committee’s Report, submitted on 23 January 2013, acknowledged the reality of sexual assault against men, homosexuals, and transgenders and recommended gender-neutral rape provisions.

- **CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013 AND SUBSEQUENT ACT**

The Ordinance initially included a gender-neutral definition of rape. However, during parliamentary debates, it faced criticism and opposition from women’s groups and human rights organizations. Consequently, the Government retained the gender-specific nature of the rape law in the Criminal Law (Amendment) Act, 2013<sup>17</sup>.

- **PRIVATE MEMBER BILL BY K.T.S. TULSI (RAJYA SABHA) (BILL ON GENDER NEUTRAL LAWS, 2019<sup>18</sup>)**

In 2018, in the case of *Criminal Justice Society of India v. Union of India*<sup>19</sup>, the Apex Court

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<sup>14</sup> Criminal Law (Amendment) Bill, 2012 (Bill No. 130 of 2012).

<sup>15</sup> Mukesh v. NCT of Delhi, (2017) 6 SCC 1.

<sup>16</sup> Government of India, “Report of the Committee on Amendments to Criminal Law” (Ministry of Home Affairs, 2013).

<sup>17</sup> Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

<sup>18</sup> The Criminal Law Amendment Bill, 2019 (Bill No. 179 of 2019).

<sup>19</sup> 2010 (WP(C) No. 856/2010).

dismissed the petition filed by NGO seeking to amend the rape laws and turning it gender neutral by stating that “The Parliament has to make a call in the issue.” In consequence to that, MP K.T.S. Tulsi introduced a Private Member Bill seeking amendments to the IPC to make sexual offence laws gender neutral. The Bill proposes penal provisions for sexual offences committed against men and transgenders, while extending protection to victims of any sex or gender. It emphasizes that the current gender-specific framework limits recognition and redress for victims of other sexes and orientations.

## **INTERNATIONAL PERSPECTIVE**

### **• UNITED STATES OF AMERICA**

In 2013, the Federal Bureau of Investigation (FBI), USA changed the definition of rape for the purposes of Uniform Crime Reporting (UCR) Program. The new definition is “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” This new definition is wide and includes both men and women and recognizes rape by penetration by either a body part or any object also. This has broadened the ambit for statistical purposes because now data can be collected irrespective of the gender, penetration by objects will also fall under rape and, sexual offences where no force was used but the victim was drugged and then raped will also be counted. The FBI was of the view that the number of victims will rise when data is collected by applying this changed definition. The State of Washington amended the definition of “sexual intercourse” in 2020 to include penetration of the vagina or anus by one person on another, either belonging to the opposite sex or of the same sex.<sup>20</sup>

### **• UNITED KINGDOM**

Section 142 of the Criminal Justice and Public Order Act, 1994 recognizes rape of man but then the perpetrator under this section remains man only. The definition says that “it is an offence for a man to rape a woman or another man”. So technically, although it does recognize male rape but does not recognize gender neutrality in entirety. Before this, the English Common Law did not recognize male rapes, and it was rather treated and punished as non-consensual buggery. The Sexual offences Act, 2003 defines rape as penetration of vagina, anus,

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<sup>20</sup> FBI UCR Program *available at*: [https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/rape-addendum/rape\\_addendum\\_final](https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/rape-addendum/rape_addendum_final) (last visited on 29 October 2025).

or mouth by another person's penis. It clearly does not treat only women as victims of rape, but it surely treats men as perpetrators of the sexual offences against men and women both. Definitions of similar intent can be found under Sexual Offences (Scotland) Act 2009 and Sexual Offences (Northern Ireland) Order 2008<sup>21</sup>.

#### • CANADA

The Criminal Code of Canada does not use the term “rape”, but it rather provides for “sexual assault” under Section 271 of the Code. The offence is gender neutral as it uses the word “everyone” and not “man” or “woman”. It is punishable with a maximum imprisonment of ten years and to a mandatory minimum punishment of one year. The definition nowhere mentions “penetration” either by a body part or by an object. Further, it criminalizes sexual assault with a weapon or by putting the complainant in fear of hurting some third person and prescribes punishment for aggravated sexual assault also. Section 265(1) of the Code defines assault and extends its application to sexual assault (and other aggravated forms of it). The law on rape, indecent assault and attempted rape was deleted from the Criminal Code on August 4, 1982, by Bill C-127 titled “An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person.” The Bill that became law on 4th January 1983 introduced sexual assault, sexual assault with a weapon and aggravated sexual assault. The Code also provides for an offence of “Sexual interference” under Section 151. It is also gender neutral because it says that “every person” who contacts the other person for sexual purpose either by touching with a body part or by an object is guilty under the provision. Such an act has been made punishable with an imprisonment of up to fourteen years and a mandatory minimum punishment of one year.<sup>22</sup>

#### • PHILIPPINES

The Anti-Rape Law of 1997 amended the Penal Code of Philippines to expand the definition of rape and made it gender neutral. Under the Revised Penal Code (Act No.3815), rape was classified as crime against persons and a new chapter on rape was introduced. Article 226-A (2) says that an offence of rape by sexual assault will said to have been committed by any person who inserts either his penis or any instrument or object into the mouth or genital of

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<sup>21</sup> Sexual Offences Act, 2003 *available at*:

<https://www.legislation.gov.uk/ukpga/2003/42/part/1/crossheading/rape> (last visited on October 29 2025).

<sup>22</sup> Criminal Code in Relation to Sexual Offences, *available at*:  
<https://www.ncjrs.gov/pdffiles1/Digitization/140416NCJRS.pdf> (last visited on October 29 2025).

other person. The new law recognizes male as victims of rape, but it does not label sexual offence against men as “rape” rather it is considered under “rape by sexual assault” and has a lesser punishment.<sup>23</sup>

## FUNDAMENTAL RIGHTS & GENDER-NEUTRAL TREATMENT OF LAW

The Supreme Court of India has acknowledged that rape violates fundamental human rights guaranteed by the Indian Constitution, including the right to life and the right to personal liberty, as seen in the landmark judgments of *Bodhisattwa Gautam v. Shubhra Chakraborty*<sup>24</sup> and *Narendra Kumar v. State (NCT of Delhi)*<sup>25</sup>. Despite this recognition, Indian rape laws continue to reflect the traditional view that only women can be victims of rape, thereby overlooking the fundamental rights of men and other genders. The introduction of gender-inclusive rape laws is not intended to desexualize the crime or diminish the experiences of female survivors. Instead, it aims to broaden legal protections by recognizing that anyone including men, transgender individuals, and non-binary persons can be victims of sexual violence. Furthermore, such legislation challenges the stereotype that only men can be perpetrators of rape, ensuring that accountability is based on the act rather than the gender of the offender. Implementing gender-neutral rape laws in a patriarchal society like India poses significant challenges. Critics argue that such reforms could potentially be misused by men to undermine the protection of women. However, these concerns should not serve as a justification for denying legal recognition to male and gender-diverse survivors of sexual violence. The state must take a proactive approach to design an effective legal framework that addresses all forms of sexual violence while preventing misuse of the law.

As *Phil Rumney* aptly states: “The critics also fail to acknowledge gender-neutral reforms are not designed to make gender irrelevant in our understanding of sexual violence; in fact, gender is central to any understanding of how and why sexual violence occurs. What is clear, however, is that while females are the main victims of sexual violence and males the main perpetrators, one still has to consider how sexual assaults beyond the male-on-female paradigm are to be labelled by the criminal law.” This perspective emphasizes the need for inclusive legal reforms that protect all individuals, recognizing the complex realities of sexual violence in

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<sup>23</sup> Revised Penal Code, available at: <https://pro1.pnp.gov.ph/Downloads/RA%208353%20Anti-Rape%20Law.pdf> (last visited on October 29, 2025).

<sup>24</sup> (1996) 1 SCC 490.

<sup>25</sup> (2009) 15 SCC 566.

contemporary society.<sup>26</sup>

## ADDRESSING GENDER BIAS AND CRIMINAL LAW: THE NEED FOR GENDER NEUTRALITY FOR MEN AND TRANSGENDER INDIVIDUALS IN INDIA

The landmark ruling in *Navtej Singh Johar v. Union of India*<sup>27</sup> marked a significant advancement for LGBTQIA+ rights in India. In this case, the Supreme Court unanimously held that Section 377<sup>28</sup> of the Indian Penal Code was partially unconstitutional, as it violated the fundamental rights guaranteed under Articles 14, 15, and 21<sup>29</sup> of the Indian Constitution. This ruling decriminalized consensual sexual acts between adults in same-sex relationships, affirming their right to equality, freedom from discrimination, and personal liberty. However, the provision under Section 377<sup>30</sup> that criminalizes non-consensual sexual acts, and bestiality was upheld as constitutional, maintaining legal protection against sexual abuse and acts involving animals. This decision was a pivotal step toward legal equality but left other issues of gender-based discrimination unaddressed.

A significant precedent for gender-specific protection against sexual harassment at the workplace emerged from the case of *Vishaka v. State of Rajasthan*<sup>31</sup>. This case involved the brutal “gang rape” of a woman at her “workplace”, which exposed the absence of legal safeguards for women facing sexual harassment in professional settings. The Vishaka Guidelines, formulated by the Supreme Court, served as the legal framework for preventing workplace harassment until the enactment of the POSH Act, 2013. While this gender-specific law offers crucial protection for women, it overlooks the reality that male and transgender individuals can also be victims of workplace harassment. This exclusion fails to address the unique vulnerabilities faced by sexual minorities, particularly transgender individuals, who are at higher risk of harassment due to societal prejudice and the absence of legal recognition for their experiences.

To address the discrimination faced by transgender individuals, the Transgender Persons

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<sup>26</sup> Shweta Pathak, “A Shift from Gender Centric to Gender Neutral Criminal Laws Precepts of Equality and Justice” 2 *International Journal of Legal Science and Innovation* 174(2025).

<sup>27</sup> (2018) 10 SCC 1.

<sup>28</sup> *Supra* note 12 at 4.

<sup>29</sup> *Supra* note 2 at 2.

<sup>30</sup> *Supra* note 12 at 4.

<sup>31</sup> (1997) 6 SCC 241

(Protection of Rights) Act, 2019<sup>32</sup> was enacted. This legislation, which received presidential assent on December 5, 2019, aims to prevent discrimination in areas such as education, employment, healthcare, and property rights. Additionally, it recognizes the right to self-identify one's gender, allowing individuals to assert their gender identity without external validation. Despite these positive intentions, the Act has faced widespread criticism for failing to adequately protect the transgender community and for reinforcing socio-legal inequalities rather than eliminating them. One of the most contentious provisions of the 2019 Act lies in Section 18<sup>33</sup>, which outlines the punishment for offenses against transgender individuals. According to Section 18(d)<sup>34</sup>, any act which harms, injures, or puts at risk, the life, safety, or well-being—including physical, sexual, verbal, and emotional abuse, is punishable by imprisonment ranging from six months to two years, along with a fine.<sup>35</sup>

This lenient penalty has drawn criticism for minimizing the severity of sexual violence against transgender persons. For example, under the IPC, rape of a woman carries a minimum sentence of ten years, with the possibility of life imprisonment. In contrast, the punishment for sexual abuse of a transgender individual under the 2019 Act is substantially lower, suggesting that such offenses are deemed less serious. This disparity reflects a hierarchical valuation of bodily autonomy and dignity, where crimes against transgender individuals are treated as minor infractions rather than grave violations.

The *NALSA v. Union of India*<sup>36</sup> judgment, which recognized transgender and third-gender individuals as “persons” under Article 14<sup>37</sup>, was a landmark ruling that acknowledged their equal protection under the law. However, the Transgender Persons (Protection of Rights) Act<sup>38</sup> undermines these principles by imposing inadequate penalties for sexual offenses against the community. This legal gap not only devalues the experiences of transgender victims but also perpetuates their marginalization within the legal system.

LGBTQIA+ activists and human rights advocates across India have called for urgent reforms to address these discriminatory provisions and ensure that sexual violence against all individuals, regardless of gender identity, is treated with equal seriousness. Hence, while recent

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<sup>32</sup> Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Dr. Sukhdev Ghasti, “Evolution of Gender Neutrality in Indian Criminal Law: A Historical and Comparative Perspective” 3 *International Journal of Trends in Emerging Research and Development* 166(2025).

<sup>36</sup> (2014) 5 SCC 438.

<sup>37</sup> *Supra* note 2 at 2.

<sup>38</sup> *Supra* note 29 at 9.

legal developments such as the *Navtej Singh Johar*<sup>39</sup> ruling and the Transgender Persons (Protection of Rights) Act<sup>40</sup> have advanced LGBTQIA+ rights in India, significant gaps remain. The disproportionate punishments for sexual offenses against transgender individuals highlight the systemic inequalities embedded in Indian law. To achieve genuine legal equality, it is essential to implement gender-neutral protections that safeguard the rights of all individuals and ensure that acts of sexual violence are prosecuted with uniform severity, regardless of the victim's gender identity.

## GENDER-SPECIFIC LAWS

### 1. SECTION 498-A IPC, 1860<sup>41</sup>

Section 498-A was introduced in the Indian Penal Code in 1983 to protect women from cruelty by their husbands or in-laws, making such offences cognisable, non-bailable, and non-compoundable. While the provision aimed to ensure justice for abused women, it has faced criticism for violating natural justice by presuming guilt before trial and granting excessive powers of arrest to the police under Section 41 of the CrPC<sup>42</sup>. The section has often been misused, leading to false complaints and harassment of husbands and their families, sometimes even for monetary extortion. Although the law's intent is valid, its gender-specific focus and lack of safeguards have caused injustice. Moreover, it fails to provide civil remedies such as injunctions, protection orders, or monetary relief, and excludes non-matrimonial relationships from its ambit.<sup>43</sup>

### 2. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (PWDVA)

To address the shortcomings of Section 498-A<sup>44</sup>, the Parliament enacted the Protection of Women from Domestic Violence Act, 2005. This Act broadened the scope of "domestic violence" to include not just physical but also emotional and economic abuse and provided both civil and criminal remedies like protective orders and injunctions. It extended protection beyond marital ties to all domestic relationships based on marriage, adoption, or consanguinity.

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<sup>39</sup> *Supra* note 24 at 8.

<sup>40</sup> *Supra* note 29 at 9.

<sup>41</sup> *Supra* note 12 at 4.

<sup>42</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 41.

<sup>43</sup> Vageshwari Deswal and Saurabh Kansal, *Bharatiya Nyaya Sanhita, 2023 Law and Practice* (Taxmann, New Delhi, 2024).

<sup>44</sup> *Supra* note 12 at 4.

However, the PWDVA too suffers from gender bias, defining the ‘aggrieved person’ exclusively as a woman and ignoring male and transgender victims of domestic violence. Over time, as social dynamics evolved, these gender-specific laws have been criticized for being misused and for violating the constitutional principle of equal protection by failing to safeguard all individuals, regardless of gender.<sup>45</sup>

### 3. RAPE AND SEXUAL OFFENCES

The *Nirbhaya Case*<sup>46</sup> of 2012 led to major reforms in India’s rape laws through the *Criminal Law (Amendment) Act, 2013*<sup>47</sup>, which broadened the definition of rape to include penetration of the vagina, anus, urethra, or mouth by any object or body part. Despite this progress, the law remains gender-specific, reflecting patriarchal assumptions that portray rape solely as a violation of a woman’s modesty and honour rather than an infringement of bodily autonomy and dignity. Such a perspective limits the scope of justice by ignoring that both perpetrators and victims can be male, female, or transgender. Furthermore, while Section 114A<sup>48</sup> of the Indian Evidence Act presumes non-consent based solely on a woman’s statement, other genders are excluded from similar protection, creating inequality. The inconsistency becomes more evident as consensual sex under false promises of marriage is often prosecuted as rape, whereas marital rape remains unrecognized as an offence under Indian law.<sup>49</sup>

### 4. OTHER SEXUAL OFFENCES IN THE INDIAN PENAL CODE, 1860

Sections 354-A to 354-D<sup>50</sup> of the IPC deal with sexual harassment, voyeurism, and stalking but continue to define offenders as “men” and victims as “women.” These provisions criminalize actions like unwelcome physical contact, sexual remarks, and showing pornography without consent. However, cases such as that of *Vijay Nair*, a man cyber-stalked by a woman, reveal the absence of legal recourse for male victims. This gender asymmetry not only violates the principles of equality and fairness but also reinforces stereotypical assumptions about gender roles in sexual crimes, undermining the universality of human rights and justice.

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<sup>45</sup> Niharika, “Gender Neutrality of Criminal Law in India-A Myth or Reality with Special Reference to Criminal Law (Amendment) Bill, 2019” 4 *International Journal of Law Management & Humanities* 916(2022).

<sup>46</sup> *Supra* note 15 at 4.

<sup>47</sup> *Supra* note 17 at 5.

<sup>48</sup> The Indian Evidence Act (Act 1 of 1872).

<sup>49</sup> *Supra* note 35 at 10.

<sup>50</sup> *Supra* note 12 at 4.

## 5. OFFENCES AGAINST MARRIED WOMEN

The Supreme Court's decision in *Joseph Shine v. Union of India*<sup>51</sup> decriminalized adultery by striking down Section 497 IPC and Section 198(2) CrPC as unconstitutional for violating Articles 14, 15(1), and 21. The earlier law punished only men and treated women as passive participants, making it discriminatory. The judgment recognized that adultery is a moral wrong, not a criminal act, leaving it as a ground for civil remedy through divorce instead. Similarly, Section 498 IPC, which punishes men for enticing married women for illicit intercourse, reflects outdated notions from a time when women were presumed incapable of consent. In today's context, such provisions appear inconsistent with the principles of gender equality and individual autonomy.

## 6. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Act was enacted to ensure protection against sexual harassment and to uphold the right to work with dignity, which the Preamble recognizes as a universal human right. However, the law's scope remains gender-specific as it defines the "aggrieved woman" as the sole victim, thereby excluding men and transgender persons from its protection. While the need to safeguard women from workplace abuse is undeniable, the Act's one-sided framework overlooks that men and transgenders can also face harassment. Male victims, in particular, often suffer in silence due to social stigma and stereotypes surrounding masculinity, leading to psychological distress and, in extreme cases, higher suicide rates among men at workplaces. Thus, the law, though progressive in intent, fails to provide equal protection and access to justice to all individuals irrespective of gender.<sup>52</sup>

## CRITICAL ANALYSIS OF GENDER-SPECIFIC AND GENDER-NEUTRAL ASPECTS IN INDIAN CRIMINAL LAWS

### I. THE INDIAN PENAL CODE, 1860 (IPC):

The Indian Penal Code (IPC), enacted in 1860, mirrors the patriarchal mindset of its colonial era, resulting in gender-specific laws, particularly concerning sexual offenses, domestic violence, and crimes against women. Many provisions of the IPC identify only women as

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<sup>51</sup> (2018) 11 SCC 1.

<sup>52</sup> *Supra* note 45 at 12.

victims and men as perpetrators, excluding male, transgender, and non-binary individuals from protection. For instance, Section 375 defines rape solely as an act committed by a man against a woman, while Sections 354 and 498A deal exclusively with offenses against women, thereby reinforcing gender binaries and limiting the scope of justice.

Despite evolving social realities, legislative reform in this area has been minimal. Judicial observations, such as in *Sudesh Jhaku v. K.C.J.*<sup>53</sup>, have acknowledged the need for broader recognition of male and transgender victims, yet the legal framework remains largely unchanged. This rigid structure denies justice to non-female victims and sustains the invisibility of gender-diverse survivors within the criminal justice system.

From a constitutional perspective, the gendered language of the IPC conflicts with Articles 14 and 15 of the Indian Constitution, which guarantee equality before the law and prohibit gender-based discrimination. The need for reform is, therefore, not only moral but constitutional. True justice requires a criminal legal system that protects all victims, regardless of gender identity. The replacement of the IPC by the Bharatiya Nyaya Sanhita (BNS), 2023, is a step toward modernization, but its partial gender neutrality shows that India still has a long way to go in achieving equality and inclusiveness in criminal law.<sup>54</sup>

## II. THE CRIMINAL LAW (AMENDMENT) BILL, 2019<sup>55</sup>

The Criminal Law (Amendment) Bill, 2019, introduced by K.T.S. Tulsi in the Rajya Sabha as a Private Member Bill, seeks to make rape laws in India gender-neutral. The Bill is grounded in the constitutional principles of equality and the right to life under Articles 14 and 21, and draws support from judicial precedents like *National Legal Services Authority v. Union of India*<sup>56</sup>, where transgenders were formally recognized as a third gender, and *Criminal Justice Society v. Union of India*<sup>57</sup>, where the Supreme Court expressed that gender neutrality in rape laws should be considered by Parliament. It also refers to India's international obligations under the Universal Declaration of Human Rights, which upholds equality and non-discrimination.

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<sup>53</sup> *Supra* note 9 at 3.

<sup>54</sup> Sumita B. Ade and Dr. M.B. Jameel, "Gender Equality: Constitutional Mandate with Reference to Justice Verma Committee Report on Criminal Law Amendments", 4 *The Lex Warriar: Online Law Journal* 189 (2024).

<sup>55</sup> *Supra* note 18 at 5.

<sup>56</sup> *Supra* note 32 at 10.

<sup>57</sup> *Supra* note 19 at 5.

The Bill proposes extensive amendments to the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act to ensure equal protection for all genders. Key changes include adding “transgender” in Sections 8 and 10 defining gender terms, redefining “modesty” under Section 8A to apply universally and replacing gender-specific references like “man” and “woman” with “any person” in offences relating to sexual harassment (Section 354A), voyeurism (354C), stalking (354D), and rape (Section 375). The Bill also introduces Section 375A defining “sexual assault” as any non-consensual act involving sexual touching or threats, punishable with imprisonment up to three years.

These amendments are timely, especially in light of *Navtej Singh Johar v. Union of India*<sup>58</sup>, which decriminalized consensual same-sex relations under Section 377 IPC, thereby reinforcing that the law should only criminalize non-consensual sexual acts, irrespective of gender. The Bill also addresses the inadequacy of *The Transgender Persons (Protection of Rights) Act, 2019*, where Section 18<sup>59</sup> prescribes only up to two years of imprisonment for sexual abuse against transgenders without defining “sexual abuse.” This creates disparity, as rape against women under Section 376 IPC carries a minimum sentence of seven years. Moreover, the absence of provisions for custodial rape of transgenders and the frequent denial of justice in such cases underscore the need for inclusive protection.<sup>60</sup>

However, the Bill’s proposals are not free from ambiguities. The redefinition of “modesty” as a characteristic tied to morality and dignity is subjective and may lead to interpretational confusion, especially with the inclusion of men and transgenders. Similarly, while the gender-neutral definition of rape is commendable, the use of gendered terms like “her husband” in the clause on fabricated consent could be replaced with “partner” to ensure inclusivity. The newly proposed Section 375A also requires clarification regarding terms such as “unwelcome actionable threat” and “reasonable belief,” which may lead to inconsistent interpretations during trials.

Despite these limitations, the Bill represents a progressive step toward ensuring gender-inclusive justice. It fills the legislative void left by the judiciary’s reluctance to make rape laws gender-neutral, as seen when the Supreme Court and Delhi High Court both declined to address the issue, stating it falls within Parliament’s purview. By extending protection to all individuals

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<sup>58</sup> *Supra* note 27 at 8.

<sup>59</sup> *Supra* note 32 at 9.

<sup>60</sup> *Supra* note 1 at 1.

regardless of sex or gender identity, the Bill moves closer to achieving the constitutional promise of equality and the human right to dignity for every person.

### III. THE BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita (BNS), 2023, was introduced as part of India's criminal law reform initiative to replace the Indian Penal Code (IPC) with a modernized framework. While the legislation introduces several progressive updates and structural changes, it falls short of achieving genuine gender neutrality, particularly in its treatment of sexual offenses. Despite India's constitutional guarantees of equality and non-discrimination under Articles 14 and 15, many provisions in the BNS continue to reflect a gendered understanding of crime and victimhood.

One of the major shortcomings lies in Section 63<sup>61</sup>, which replicates Section 375 of the IPC in defining rape exclusively as an act committed by a man against a woman. This preserves the gender binary framework, excluding men, transgender, and non-binary individuals from legal recognition as victims of rape.

The BNS includes some positive changes, particularly through gender-neutral provisions in offenses like child procurement (Section 96)<sup>62</sup>, importation of persons (Section 141)<sup>63</sup>, and kidnapping (Sections 135 and 137)<sup>64</sup>, which now extend protection to all children irrespective of gender. However, these changes are overshadowed by the continued gender-specific framing of critical sexual offenses, which limits the protection available to male and transgender victims.

The Chapter on Offenses Against Women and Children (Sections 63–99)<sup>65</sup> consolidates sexual and gender-based crimes but predominantly focuses on women as victims. This selective inclusivity fails to address the broader reality of sexual violence, where victims can belong to any gender. The result is an inconsistent legal structure that simultaneously promotes gender neutrality in some areas while undermining it in others. Such inconsistencies may also cause

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<sup>61</sup> The Bhartiya Nyaya Sanhita, 2023 (Act 45 of 2023).

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

confusion in judicial interpretation and enforcement.<sup>66</sup>

The exclusion of transgender and non-binary individuals from explicit legal protection remains a major gap in the BNS. This oversight contradicts judicial precedents such as *National Legal Services Authority v. Union of India*<sup>67</sup>, which recognized transgenders as a “third gender” entitled to full constitutional protection. Moreover, while the *Transgender Persons (Protection of Rights) Act, 2019*<sup>68</sup> attempts to provide safeguards, it prescribes only a maximum punishment of two years for sexual abuse and fails to define the term adequately, leading to disparities in justice and accountability.

From a broader perspective, the BNS’s partial gender neutrality illustrates a continued reluctance to move beyond the colonial-era mindset embedded in the IPC. Societal stigma, lack of awareness, and institutional apathy compound the problem by silencing male and transgender victims, whose complaints often face disbelief and ridicule. Without a comprehensive recognition of their rights and experiences, the criminal justice system cannot claim to be truly inclusive.

In conclusion, while the Bharatiya Nyaya Sanhita, 2023 marks a significant legislative shift in India’s legal landscape, it remains only a partially gender-neutral reform. The persistence of gendered terminology in key sexual offense provisions undermines the progressive intent of the law. To fulfill its constitutional promise of equality and justice for all, the BNS must adopt a fully gender-neutral framework that recognizes every individual—regardless of gender identity or sexual orientation, as deserving of equal protection and redress against sexual violence.<sup>69</sup>

## CRITICAL ANALYSIS AND RECOMMENDATIONS

Gender neutrality in criminal law represents a vital step towards justice that respects and protects the rights of all individuals irrespective of their gender identity or expression. The erstwhile Indian Penal Code, 1860 (IPC), drafted during colonial times, primarily reflects a binary gender framework holding men as perpetrators and women as victims, thereby

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<sup>66</sup> Mukherjee, S., “Re-Conceptualizing Rape Laws in India from a Gender-Neutral Perspective” 11 *International Journal of Advanced Legal Research* 512(2025).

<sup>67</sup> *Supra* note 36 at 10.

<sup>68</sup> *Supra* note 32 at 10.

<sup>69</sup> *Supra* note 26 at 8.

excluding transgender, non-binary, and male victims of crimes such as sexual offenses and domestic violence. The Bharatiya Nyaya Sanhita (BNS) 2023, aimed at reforming criminal laws, makes some progress towards gender neutrality but falls short of fully addressing these concerns.

## CRITICAL ANALYSIS

The IPC's gender-specific provisions, like Section 375<sup>70</sup> defining rape as a crime committed by a man against a woman, reinforce patriarchal norms and exclude significant victim groups from legal protection. The criminal justice system risks perpetuating invisibility and injustice for male and transgender survivors, while also deterring victims from seeking redress due to social stigma. Judicial rulings like *Sudesh Jhaku v. K.C.J.*<sup>71</sup> and the *Law Commission of India's 172nd Report*<sup>72</sup> have acknowledged these shortcomings, recommending gender-neutral reforms that standardize terms such as "person" instead of "man" or "woman" for broader inclusivity.

The BNS, 2023 incorporates gender-neutral language in several sections, such as child procurement (Section 96<sup>73</sup>), importation of persons (Section 141<sup>74</sup>), and kidnapping (Sections 135 and 137<sup>75</sup>), thereby extending protection regardless of gender. However, crucial provisions like Section 63<sup>76</sup> (the counterpart to IPC Section 375) retain binary gender roles in defining rape, limiting protections to female victims and male perpetrators only. This inconsistency undermines the progressive aspects of the law and fails to align with constitutional guarantees under Articles 14 and 15, which ensure equality and prohibition of gender-based discrimination.

Moreover, legislative gaps remain glaring in the protection of transgender persons, who are often only minimally protected under the Transgender Persons Protection of Rights Act, 2019, where punishments for sexual violence are disproportionately low compared to the IPC's provisions for women. The exclusion of non-binary genders and the lack of uniform punitive

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<sup>70</sup> *Supra* note 12 at 4.

<sup>71</sup> *Supra* note 9 at 3.

<sup>72</sup> *Supra* note 13 at 4.

<sup>73</sup> *Supra* note 61 at 16.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

measures reveal a systemic legal and social bias.

## EXISTING GENDER-NEUTRAL LAWS

- **Protection of Children from Sexual Offenses Act (POCSO), 2012<sup>77</sup>:** Protects children of all genders from sexual abuse, using gender-neutral language.
- **Certain sections of BNS<sup>78</sup> (e.g., Sections 96, 135, 137, 141):** These criminalize sexual offenses like child procurement and kidnapping in a gender-neutral manner.
- **International examples:** Canadian Criminal Code, US FBI's updated rape definition, and other countries demonstrate models of gender-neutral sexual offenses.

## RECOMMENDATIONS

1. **Comprehensive Gender-Neutral Redrafting of Sexual Offenses:** Replace all gendered terms in provisions like Section 63, BNS<sup>79</sup> with neutral terms such as "person" and redefine offenses like rape and sexual assault to include all genders as both potential victims and perpetrators.
2. **Uniform Punishment Framework:** Harmonize penalties for sexual offenses across all genders, ensuring that transgender and non-binary victims receive justice equal in severity to that of cisgender women.
3. **Inclusion of Non-Binary and Transgender Identities:** Explicitly recognize and protect transgender and non-binary persons within criminal law texts, building upon constitutional recognition (NALSA judgment) and aligning with international human rights norms.
4. **Public Awareness and Sensitization:** Legal reforms must be complemented by education and sensitization initiatives within law enforcement, judiciary, and society to dismantle stigma and improve access to justice for marginalized groups.

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<sup>77</sup> Protection of Children from Sexual Offenses Act (POCSO), 2012 (Act 32 of 2012).

<sup>78</sup> *Supra* note 61 at 16.

<sup>79</sup> *Ibid.*

5. **Review of Gender-Specific Laws:** Laws like Section 498A IPC<sup>80</sup> (cruelty by husband or relatives) and the Protection of Women from Domestic Violence Act, which currently exclude male and transgender victims, should be revisited to incorporate gender-neutral or inclusive definitions.
6. **Strengthen Definitions and Clarity:** Address interpretational ambiguities in expanded gender-neutral laws, especially concerning terms like “modesty” and “consent,” to ensure fair, consistent judicial application.

## RELEVANT CASE LAWS

- **Supriyo v. Union of India**<sup>81</sup>: The Supreme Court supported the right to marry irrespective of gender but left the enactment of same-sex marriage laws to the Legislature.
- **National Legal Services Authority (NALSA) v. Union of India**<sup>82</sup>: This judgment legally recognized transgender people as a "third gender," emphasizing that the right to equality under Article 14 extends to all persons, regardless of gender. It affirmed the right to self-identification and granted transgender individuals equal constitutional rights.
- **Navtej Singh Johar v. Union of India**<sup>83</sup>: The Supreme Court decriminalized consensual same-sex relations by reading down Section 377 of the Indian Penal Code. The court declared that criminalizing consensual same-sex relationships violated the fundamental rights to equality, dignity, and freedom of expression, and that sexual orientation is an inherent part of identity.
- **Joseph Shine v. Union of India**<sup>84</sup>: In this case, the Supreme Court struck down Section 497, which criminalized adultery, ruling it was discriminatory and patriarchal. This judgment reinforced the principle of gender equality in personal laws. The law treated adultery as a crime only when committed by a man with a married woman, without the

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<sup>80</sup> *Supra* note 12 at 4.

<sup>81</sup> 2023 SCC OnLine SC 1348.

<sup>82</sup> *Supra* note 36 at 10.

<sup>83</sup> *Supra* note 27 at 8.

<sup>84</sup> *Supra* note 51 at 12.

husband's consent. The provision explicitly discriminated based on gender and treated women as the property of their husbands. Hence, declaring it unconstitutional as it violated Articles 14, 15, and 21. The Court held that the law perpetuated gender stereotypes and failed to treat men and women equally.

## **CONCLUSION**

Achieving true justice demands moving beyond traditional gender binaries. Criminal law must recognize the diverse realities of sexual violence and discrimination experienced by all genders. Gender-neutral laws not only uphold constitutional equality but also foster a more inclusive society by acknowledging the dignity of every person. While BNS 2023 demonstrates a sincere attempt to modernize India's criminal justice system, its partial approach to gender neutrality is insufficient. Lawmakers must urgently adopt comprehensive reforms that protect every survivor equally and hold every perpetrator accountable, regardless of gender identity. Striking a balance between protecting women's rights and ensuring universal inclusivity will be a crucial, though challenging, step toward a truly equitable legal framework.