
A CRITICAL ANALYSIS ON MALE RAPE IN PRISON

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ABSTRACT

In Indian correctional systems, there is a significant underreporting of male rape which is committed due to overcrowding, hierarchical structure of jails, poor monitoring system, social stigma, and a culture of silence. The Bharatiya Nyaya Sanhita (BNS), 2023, contains provisions which are gender specific in relation to rape, thus leaving a huge protection gap for adult male and transgender survivors. The paper critically discusses the legal, institutional and socio-cultural issues that facilitate male sexual victimisation and explore the issue of Section 63 of the BNS, the repeal of Section 377 IPC, constitutional issues, and how power and hegemonic masculinity perpetuate this form of victimisation. It uses a mixed-methods and socio-legal research approach, relying on the statutory provisions, judicial decisions, constitutional principles, international human rights standards, NCRB data, RTI disclosures, civil society documentation, and existing academic literature, while adding in some qualitative aspects on the prison structures and reporting challenges. The paper concludes that the current legal system fails to acknowledge the sexual aspect of male and transgender prisoners' experiences of violence, and thus continues to perpetuate under-reporting, evidentiary challenges and institutional impunity. It ends by calling for gender inclusive sexual offence provisions, independent and time bound investigations, better medico-legal processes, trauma-informed prison administration, disaggregated data collection and better independent oversight to ensure that sexual violence in prison is recognised and responds effectively.

Keywords: Custodial sexual violence; Prisoners' victimization Gender; Male rape; Masculinity; Criminal justice administration.

INTRODUCTION

Sexual assault in correctional facilities is one of the most serious violations of human dignity and is one of the most hidden forms of abuses in India. The issue of violence experienced by women has attracted a growing amount of legal and social interest, whereas there has been little legal, academic and administrative interest into the experiences of violence for men in prisons and in police custody. Gender stereotypes, social stigma, and the practical challenges of evidence often make male rape hard to detect report, investigate, and formally recognize. This invisibility is a factor in the culture of impunity and skews the perception of custodial violence. India also has international human rights treaties that forbid torture and inhuman and degrading treatment. Yet, overcrowding, understaffing, weak policing and supervision, and the hierarchical nature of prisons provide opportunities for sexual coercion and exploitation. The data available are incomplete because there is hardly any data on sexual violence against male prisoners available, which is available in official sources only in part. The extent of the problem is therefore largely unknown.

The enactment of Bharatiya Nyaya Sanhita, 2023 (BNS), an Indian Penal Code, has revived worries about the legal safeguards offered to men. The Bharatiya Nyaya Sanhita, 2023 (BNS) has come into effect as a substitute for the Indian Penal Code, sparking fresh concerns about the legal protections afforded to male victims. The BNS maintains a gendered definition of rape as the act of a man committing rape on a woman. This leaves adult men and transsexuals without legal protection.¹ The abolition of Section 377 of the IPC has also added to the legal challenges faced by those seeking to respond to non-consensual sexual acts between adults, with certain types of sexual violence being dealt with through more obscure offences. Sexual violence in prison must also be seen from a perspective other than sexual orientation and one of power. Sexual assault can be used as a means of domination, humiliation and social control in hyper-masculine prison settings, such as against younger, weaker and socially vulnerable prisoners. A lack of adequate psychological support and resources exacerbates the issue; the India Justice Report 2025 reveals that trained mental health professionals in Indian prisons are in short supply.²

¹ CJP Team, New Rape Laws Leave Men and the Transgender Community Vulnerable, CITIZENS FOR JUST. & PEACE (Jun. 26, 2024), <https://cjp.org.in/new-rape-laws-leave-men-and-the-transgender-community-vulnerable/>.

² Prafulla Vats, India's Prison Crisis: Overcrowding and Lack of Healthcare Services in Focus, VAJIRAM & RAVI (Apr. 18, 2025), <https://vajiramandravi.com/current-affairs/indias-prison-crisis-overcrowding-and-lack->

The other pertinent tectonic affair is over-population. The lack of privacy and constant contact between prisoners can allow for coercion and abuse, especially since there are some prisons that are reportedly at over 131% capacity.³ The majority of inmates in prison are under trials is another complicating factor.

Thus, it is important to consider male prison rape not as an isolated or predictable effect of incarceration. It is a structured utterance of power, patriarchy, institutional neglect and legal exclusion. This must be addressed through the adoption of gender neutral sexual offence laws, the collection of gender-disaggregated data, the development of effective complaint mechanisms, independent prison oversight, an increase in the provision of psychological services and institutional recognition of male survivors. To ensure the dignity and bodily autonomy of all prisoners is respected, it is crucial to dispel the myth of the 'masculine prisoner', which assumes that men are incapable of being victims.

THE LEGAL AND CONSTITUTIONAL TERRAIN OF MALE RAPE IN PRISON

The systematic invisibilisation of male victims in the Indian criminal justice system is a major structural vulnerability, both on a statutory basis and due to social stigma. After the Nirbhaya tragedy, and in the wake of judicial activism, there have been more measures taken to stop crimes of sexual violence against women, but crimes of sexual violence committed on males are not getting the same recognition.⁴ One of the major issues is gender specific nature of the Bharatiya Nyaya Sanhita 2023 section 63 gives the definition of rape in terms of a male perpetrator, female victim framework, leaving out major male victims of non-consensual sexual penetration.⁵ In correctional situations, rape and sexual violence can be a way of domination and humiliation, a means of control, as well as an expression of sexual desire, and this exclusion is particularly serious.

This invisibility is reinforced by the hyper-masculine prison environment. Sexual assault can become a way to 'feminise' and subordinate weak prisoners, especially the younger, weaker and more marginalized prisoners. Cultural norms that men must be strong, invulnerable and

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³ Indian Prisons: Sexual Abuse & Gender-Sensitive Reforms, THE AMIKUS QRIAE (Sep. 12, 2025), <https://theamikusqriai.com/indian-prisons-sexual-abuse-gender-sensitive-reforms/>.

⁴ Mukesh v. State (NCT of Delhi), (2017) 6 S.C.C. 1 (India).

⁵ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).

self-protecting add to the psychological hurdle in reporting.⁶ As a result, victims might be silent due to the fear of being humiliated, disbelieved, retaliated against, or categorized as “non-masculine.” When survivors do not have the legal recognition that they deserve, it can be even less of an incentive to come forward to the authorities.

In *Sunil Batra v Delhi Administration*, the Supreme Court decided that the fundamental rights of a person is not extinguished by his imprisonment. The case had started with a communication sent by prisoner Sunil Batra on the issue of "cruel and inhuman treatment" in Tihar Jail. The Court expressed strong objections that the injuries were to the rectum were severe, and that the injuries were caused by a prison warder, which were inserted into the rectum, and that these injuries were not caused by the 'piles' or self-inflicted, and that a prisoner must be treated humanely, and that torture cannot be justified because someone is in prison. It also acknowledged the constitutional power of courts to step in when prisoners' basic rights are infringed upon.⁷

The BNS has removed Section 377, but this has raised concerns since there is no specific, gender neutral offence for non-consensual sexual penetration between adults.⁸ There is concern about the complete removal of Section 377 in the BNS because there is no specific, gender neutral offence for non-consensual sexual penetration between adults.

As a result, male victims suffer from a protection gap due to the gender specific language used in Section 63 BNS. Depending on the facts of the case, sexual assault on a male prisoner may need to be prosecuted under general offence against hurt, criminal force or other types of assault.⁹ Such arrangements are likely to not fully reflect the sexual nature, psychological impact and contravention of the victim's bodily autonomy in the crime. It is thus not only a matter of the terms of the problem but also a matter of legal recognition and proportionality of punishment.

It could also have procedural implications. Special investigative and forensic measures that accompany sexual offence cases may not necessarily be available in cases against male victims

⁶ Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books 1961).

⁷ *Sunil Batra v. Delhi Administration*, (1980) 3 SCC 488; AIR 1980 SC 1579.

⁸ Indian Penal Code, No. 45 of 1860, § 377 (India).

⁹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)

that are not legally designated as rape.¹⁰ The lack of specialized procedures can further deter reporting and hinder investigation in a prison setting, where victims are likely to be more readily available than evidence and would be in close proximity of alleged perpetrators.

The exclusion also brings to mind questions raised by Article 14.¹¹ The argument for prisoners having protection against torture and degrading treatment, despite the restrictions of their physical liberty, is further supported by Article 21.¹²

This is reiterated by international standards. Sexual offences against prisoners can thus be considered under the umbrella of human rights in relation to torture and inhuman or degrading treatment in custody—India has signed, but not ratified, the Convention against Torture.¹³

It is a particular issue for transgender individuals who could be targeted for violence in facilities that are not gender appropriate. The binary gendered approach of Section 63 BNS is insufficient to capture the complexity of the issue of sexual violence against transgender persons in custody.¹⁴ While the Transgender Persons (Protection of Rights) Act, 2019 offers some protections against discrimination, it does not establish a complete gender neutral sexual offence framework like that provided by the rape laws.¹⁵

Overall, BNS 2023 highlights a high level of vulnerability about male and transgender victims of sexual violence within correctional facilities. Sunil Batra shows that the State has increased the duty to protect the lives of people whose liberty it has taken away. Incorporating gender neutral provisions for sexual offences, effective forensic and reporting systems, independent prisons' oversight, gender disaggregated data, psychological support and protection from retaliation are essential for a comprehensive solution. The Justice Verma Committee's call for a gender neutral framework of sexual offences is pertinent to the discussion here.¹⁶ Sexual violence in prison is not a result of incarceration, but a gross violation of dignity, bodily autonomy and constitutional rights.

¹⁰ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).

¹¹ India Const. art. 14.

¹² India Const. art. 21.

¹³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹⁴ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).

¹⁵ Transgender Persons (Protection of Rights) Act, No. 40 of 2019 (India).

¹⁶ Justice J.S. Verma Comm., Report of the Committee on Amendments to Criminal Law (2013), https://www.mha.gov.in/sites/default/files/2022-08/Justice_Verma_Committee_Report_2013_0.pdf.

Power, Masculinity, and the Carceral State: Theoretical Foundations of Sexual Violence in Indian Prisons

Identifying the Prison Subculture: Partial Vision and the Panopticon of Reality

In addition to the formal rules of the prison, people living in prison may have an informal “inmate code” that gives rise to a particular prison subculture.¹⁷ The notion of unwritten rules affecting the relationship between inmates and between inmates and prison staff also offers a valuable theoretical framework for understanding sexual violence in incarceration settings.¹⁸

In the prison context, however, the possibility of observation is not necessarily complete, but it can be selected, as Jeremy Bentham's Panopticon and Michel Foucault's theoretical development suggest. Surveillance could be aimed at stopping escapes, disorder or violence, but informal power relationships between prisoners might not be as conspicuous. This results in what can be termed a “blind spot” where domination can happen in spaces that are inadequately monitored.¹⁹ The body then becomes a significant site of power and the display of status for the inmate.

This hierarchy is based on the concept of masculinity. This tendency towards hyper-masculinity in the prison context can thus be linked to how the concept of hegemonic masculinity can develop, which connects dominance and authority to male status, and explain how sexual violence can be a mechanism of domination and symbolic feminisation in a context where masculinity is perceived as dominant and superior.²⁰ The victim can be under rank in hierarchy of the prison and the perpetrator can strengthen his rank by exercising power.

The issue became further complicated on the theoretical front by the transformation from the Indian Penal Code (“IPC”) to the Bharatiya Nyaya Sanhita (“BNS”), 2023.²¹ Section 63 of the BNS contains a gender-specific definition of rape, and the repeal of Section 377 of the IPC has removed the previous provision which could have covered some non-consensual sexual acts

¹⁷ Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books 1961).

¹⁸ Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton Univ. Press 1958).

¹⁹ Jeremy Bentham, *The Panopticon Writings* (Miran Božovič ed., Verso 1995) (1791); Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1975).

²⁰ R.W. Connell, *Masculinities* (2d ed. Univ. of Cal. Press 2005).

²¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India)

performed by adult men.²² This gives cause for concern about the legal recognition of rape victims being adult males. The resulting gap can be explored by examining the concept of “epistemic injustice” as developed by Miranda Fricker, who states that people might not have the socially or institutionally recognised vocabulary that their experience is that they need to communicate and that their experiences are then read.²³

The “code of silence” further retards this misty. A prisoner may be subjected to stigma, retaliation or re-victimisation by others as a result of reporting sexual violence.²⁴ When there is not enough room to move around and not enough privacy, the eyes of other prisoners can be as important as prison guards' eyes. The possibility of sexual violence can then be used as a form of control or intimidation in prison structures.

From Decriminalization to De-protection: Section 377, the BNS, and the Protection Gap

The change in The Indian Penal Code (“IPC”), 1860, Section 377 is one of the most significant events in the history of Indian sexual-offence legislation. Section 377 was introduced during colonial times and made it an offence to engage in “carnal intercourse against the order of nature.”²⁵ The constitutional change in Section 377 thus created a complex legal transition, as the provision was not only used to criminalise and stigmatise consensual gay relationships, it also provided a criminal-law tool to prosecute some non-consensual sexual acts involving male victims, when the law of rape was expressly gendered. This leaves us with an important question about whether there is a specific criminal-law framework for sexual violence against adult male prisoners being retained in the Bharatiya Nyaya Sanhita (“BNS”) 2023, which replaced the IPC, whereas the latter had criminalised consensual sexual activity between adults in private while keeping non-consensual sexual acts and sexual acts with minors criminal.²⁶ Historically, rape was a gender-based offence in which a woman was raped and thus a man could not generally raise the defence of rape on the basis of lack of consent alone. Section 377 therefore ran, more or less, as a facsimile of a criminal section for some non-consensual sexual acts involving men. The historical function should not, however, be allowed to detract from the oppressive nature of the provision. In his judgment, Justice Dhananjayan Reddy noted that Section 377 of the IPC was used to stigmatize sexual minorities and its language of ‘the order

²² Indian Penal Code, No. 45 of 1860, § 377 (India).

²³ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford Univ. Press 2007).

²⁴ *Sunil Batra v. Delhi Administration*, (1980) 3 S.C.C. 488 (India).

²⁵ The Indian Penal Code, No. 45 of 1860, §§ 375, 377 (India).

²⁶ The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).

of nature' meant that it allowed 'intrusive and discriminatory' enforcement. Justice Dhananjayan Reddy's judgment then left Section 377 in a paradox: it was an instrument of criminalisation against sexual minorities, and in the absence of a gender neutral rape law it was also a possible mechanism for criminal accountability for sexual violence against male victims.²⁷

This difference is especially pertinent when it comes to correctional homes. In *Sunil Batra v. Delhi Administration*, the Supreme Court had to deal with evidence of the brutality of treatment meted out to prisoners – one case involved a prisoner having a serious anal injury caused by a rod being inserted into his anus. In that case, the Supreme Court laid down a general rule that prisoners do not lose their fundamental rights upon being placed in custody. Prison authorities are still governed by the constitutional constraints, including for example Article 14 and Article 21. Unlike the IPC, the BNS does not re-state section 377 as an offence in general. The consequence of these is that Section 63 still retains the highly gendered terminology of rape, using the term woman to describe the victim. That's not to say that all sexual offenses against an adult male are "legitimate" sexual acts under the BNS.²⁸ Other general criminal provisions may be applicable as appropriate based on the conduct and circumstances. Instead, it is the lack of a distinct gender-neutral offence of rape in the BNS for adult male victims which are a matter of concern. This dissimilarity is especially prominent in the context of inmates, as sexual violence can take the form of penetration, coercion, threat, humiliation, extortion, or use of custodial power.²⁹ This protection gap is thus predominantly a legal segregation and recognition issue. If a male is the victim instead of a female, the offence may have to be legally defined under other provisions to be considered "rape". Differential Classification may impact the conceptualization of harm, the investigative process, the social construction of the offence, and how the victim can describe the offence.

The question before the Constitution's courts is, then, whether the absence of adults in the statutory definition of rape, that is, male victims, can be squared with the constitutional goal of preserving a woman's body and her autonomy over it. The issue must not be conveyed as a wish to incapacitate protections specific to women. The second constitutional issue is whether a blanket omission of an equivalent special legal category for victims of serious non-consensual sexual violence of adults is justified by the existence of a similar special legal category for

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

²⁸ Sunil Batra v. Delhi Administration, (1980) 3 S.C.C. 488 (India).

²⁹ The Indian Penal Code, No. 45 of 1860, § 375 (India).

women as victims.³⁰

This is a prominent concern in custodial settings. A prisoner has no right to security, medical treatment, access to complaints procedures or protection from other prisoners or prison staff without relying on the State. The State thus has an unusual degree of control over the physical environment of the prisoner. This principle of equality must therefore be taken into account in relation to the State's duty to safeguard individuals whose freedom of action has already been limited.

The strongest constitutional basis for addressing sexual violence in prisons is constitutional Article 21.³¹ The Supreme Court has always interpreted the right to life and personal liberty as including dignity and against arbitrary and inhuman treatment. The Court, in the case of Sunil Batra, had affirmed that prisoners are not without constitutional rights and prison authorities could not take the Constitution out of the prison walls.³² The Supreme Court has, in more recent times, reiterated that a prisoner is a bearer of fundamental rights and that the Constitution cannot be taken out of the prison walls by the authorities.³³

Sexual violence is a particularly egregious breach of physical autonomy, in that it is an invasion of one's human dignity. In *K.S. Puttaswamy v. Union of India*, judicial interpretation was given to the constitutional importance of privacy and bodily autonomy, which was reflected in the Court's incorporation of decisional autonomy and bodily integrity into the overall constitutional meaning of privacy.³⁴

These principles take on special significance for prisoners as they are deprived of many of the standard means of self-protection. A prisoner is not able to just walk away from an unsafe environment, relocate or independently request immediate protection from the perpetrator. The State thus has an increased responsibility to provide a safe custodial setting.

It can also be considered in relation to Miranda Fricker's notion of epistemic injustice, where the social or legal system does not have the conceptual tools to acknowledge an individual's experience, and they may experience challenges in converting their personal suffering to a

³⁰ INDIA CONST. art. 15(3)

³¹ INDIA CONST. art. 21

³² Sunil Batra, (1980) 3 S.C.C. 488.

³³ Sukanya Shantha v. Union of India, 2024 INSC 753 (India).

³⁴ K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

grievance that is publicly intelligible.³⁵ This is a very serious issue for male inmates. Vulnerability, submission, and help-seeking with weakness may be linked to prison masculinity. The theory of hegemonic masculinity, developed by R.W. Connell, also helps to explain how identities related to marginalisation and vulnerability may be consigned to the margins in prison communities.³⁶

This legal invisibility of male sexual victimisation can thus interact with the social “code of silence.” If a prisoner expects to be ridiculed, retaliated against or feminised, they may be less likely to report abuse at this point. The institutional barrier is even greater if there is no clearly recognised category of rape in the law for his experience. The lack of reported cases, therefore, cannot be considered as an automatic indicator of the absence of sexual violence.³⁷

The trajectory of the history of Section 377 shows that this is not enough to address sexual violence either under a criminal law or when there is no law at all. The BNS too needs to be judged on the constitutional obligation of all people, including prisoners, to be protected from serious violations of bodily integrity.

So the question of the big reform is not whether Section 377 should be brought back in. It's colonial and morality based system is not matching with the constitutional commitment towards dignity and autonomy.³⁸ The question is what should the criminal law look like if it is to recognise serious non-consensual sexual violence in a gender-neutral way, based on the concept of consent, bodily integrity and the nature of the harm rather than the sex of the victim?

Confidential complaint systems should be established in prisons, there should be independent investigations into sexual violence in custody, medical and psychological treatment should be provided, and gender-disaggregated data should be systematically collected. The goal should be to ensure that a prisoner's vulnerability should not be a reason for legal invisibility. The constitutional guarantee under Article 14 and 21 that incarceration shall “be with due process of law” means that the State may not become indifferent to the rights of the body and dignity of those it is incarcerating.³⁹

³⁵ MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (Oxford Univ. Press 2007).

³⁶ R.W. CONNELL, *MASCULINITIES* (2d ed., Univ. Cal. Press 2005).

³⁷ *Navtej Singh Johar*, (2018) 10 S.C.C. 1.

³⁸ The Indian Penal Code, No. 45 of 1860, § 377 (India).

³⁹ INDIA CONST. arts. 14 and 21.

CONCLUSION

The shift from the Indian Penal Code (IPC), 1860, to the Bharatiya Nyaya Sanhita (BNS), 2023, marks a contradictory point in Indian legal history when the pursuit of "decolonisation" has unintentionally led to a major constitutional retreat concerning male physical integrity. The legislature has created a "Remedial Vacuum" that leaves adult male survivors, especially those in the "Total Institution" of the prison, without a specific penal remedy by completely repealing Section 377 IPC—the only provision that previously criminalised non-consensual sexual acts against men—while simultaneously maintaining a strictly gender-specific definition of rape under Section 63 BNS. This "Protection Deficit" effectively deprives male victims of the "legal vocabulary" required to seek justice and violates the "Doctrine of Non-Retrogression" established in *Navtej Singh Johar v. Union of India* (2018) by forcing the judiciary to downgrade serious sexual violations to minor offences like "voluntarily causing hurt" under Section 115 BNS. This statutory omission institutionalises what Miranda Fricker refers to as "Epistemic Injustice," since the law fails to identify the trauma it has a fiduciary obligation to avoid within the carceral domain, where the "Police Mindset" is frequently characterised by a hyper-masculine prejudice and a "Code of Silence." A sobering reminder that the male body has long been a site of state-sanctioned violation that the BNS now makes invisible is the seminal precedent of *Sunil Batra v. Delhi Administration* (1980), which used Epistolary Jurisdiction to validate the reality of custodial sodomy as a breach of Article 21. As a result, the continuing legal battle in *Arif Jafar v. Union of India* (2024) appears to be the crucial judicial "way out," contesting the BNS for failing to offer equal protection under Article 14 and calling for a gender-neutral interpretation of sexual offences to safeguard each prisoner's "personhood." The Indian state must go beyond this binary protectionism and implement the Justice J.S. Verma Committee's (2013) recommendations to amend Section 63 BNS in order to genuinely carry out the mandate of transformative constitutionalism. This will guarantee that the "iron curtain" of the prison is replaced by a universal shield of dignity that protects every vulnerable body, regardless of gender.