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# AN ANALYTICAL STUDY OF CUSTODIAL SEXUAL VIOLENCE IN INDIA: LEGAL FRAMEWORK, IMPLEMENTATION CHALLENGES, AND REFORM PROSPECTS

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Aditya Trivedi, National Law University, Meghalaya

## ABSTRACT

Sexual violence in Indian prisons remains a largely unaddressed human rights concern, particularly for male and transgender inmates. The absence of gender-neutral provisions in the Bharatiya Nyaya Sanhita (BNS) leaves non-consensual same-sex assaults in custodial settings without adequate legal recourse. This research adopts a qualitative approach, analysing case law, International Comparison, National Human Rights Commission (NHRC) interventions, policy documents, the UN stance on prisoner rights and empirical studies to identify systemic gaps. The study uses *Structural Violence Theory*, *Queer theory* and *Feminist Theory* to illustrate how institutional neglect, caste-based hierarchies, and rigid legal systems that recognize only binary gender categories increase the vulnerability of certain prison populations. Findings indicate that when laws don't recognise certain groups, inadequate grievance mechanisms exist, and there are no special protections in place, they are more likely to face abuse. The paper recommends legislative amendments to criminalize all forms of custodial sexual violence, independent monitoring through AI-enabled tools, and comprehensive training for prison staff.

**Keywords:** Sexual violence in prison, Custodial rape, Male and transgender inmates and Structural violence.

## INTRODUCTION

### CONTEXT OF CUSTODIAL SEXUAL VIOLENCE IN INDIA

“A murderer kills the body, but a rapist kills the soul.” – Justice Krishna Iyer<sup>1</sup>

Custodial violence is becoming one of the worst human rights abuses in India.<sup>2</sup> While most official statistics, public discourse, and legal safeguards focus on female survivors. Male and transgender prisoners often remain invisible in both research and policy.<sup>3</sup> Their absence is not because the harm is rare, but because institutional frameworks in a certain way fail to recognise, record, or respond to it. This exclusion reflects deeper patterns of structural neglect and the persistence of gender-exclusive definitions in law.

The repeal of section 377<sup>4</sup> in *Navtej S. Johar v. Union of India* (2018)<sup>5</sup> decriminalised consensual same-sex conduct but left no statutory safeguard for male and transgender victims of non-consensual acts in custody.

The study critically examines the gaps in the *Bharatiya Nyaya Sanhita* regarding custodial sexual violence, with special reference to male and transgender inmates, and evaluates the legal and institutional frameworks. This paper looks at how deeply rooted system issues and a lack of gender neutral laws work together. It uses ideas from Structural Violence Theory, Queer Theory and Feminist Legal Theory to understand this problem.

The research findings will highlight the disconnect between constitutional guarantees and custodial realities, exposing legal and institutional shortcomings. It aims to show the need for laws that address sexual violence in custody without gender bias, separate systems for reporting complaints, and changes that follow international human rights rules to protect the safety of every prisoner.

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<sup>1</sup> *Rafiq v. State of U.P.*, A.I.R. 1981 S.C. 559, 562 (India) (Iyer, J.) (“A murderer kills the body, but a rapist kills the soul.”).

<sup>2</sup> Shrenitha Anantula, *Custodial Rape: A Dehumanizing Violence Against Society*, 5 INDIAN J.L. & LEGAL RES. 1, 1 ¶ 1 (2025).

<sup>3</sup> Himanshu M. Mendhe, *Rape: A Gender-Neutral Offence*, LEGAL SERV.

INDIA, <https://www.legalserviceindia.com/legal/article-19388-rape-a-gender-neutral-offence.html> ¶ 3.

<sup>4</sup> Indian Penal Code, No. 45 of 1860, § 377 (India)

<sup>5</sup> *Navtej Singh Johar & Ors. v. Union of India*, (2018) 10 SCC 1 (India).

## RESEARCH METHODOLOGY

This study looks at sexual violence that happens in prisons in India, especially focusing on male and transgender inmates who are often not considered in legal and policy discussions. Even though women are the main focus of official statistics, this report tries to include more by showing how laws based on gender stereotypes and lack of attention from institutions leave male and transgender survivors without proper recognition. The research uses existing data, such as court decisions on violence in prisons, guidelines and actions from the National Human Rights Commission and the Law Commission of India, legal texts like the Prisons Act, 1894, the Model Prison Manual, and the Bharatiya Nyaya Sanhita of 2023, and international laws like the Prison Rape Elimination Act of 2003 from the United States and Canada's rules on dealing with sexual violence and gender-diverse people in prisons. The study also looks at reports from groups like the Commonwealth Human Rights Initiative and the People's Union for Civil Liberties, which describe prison conditions and share stories from survivors. The research method uses legal analysis supported by a close look at laws, policies, and human rights reports. This helps find the differences between what the law says and what actually happens to inmates. The study took place from January 2024 to August 2025, with a focus on changes after the Bharatiya Nyaya Sanhita was passed in 2023 and the Delhi High Court's work on improving laws against sexual violence in prisons.

## THEORETICAL FRAMEWORK

This study uses three connected ideas—Structural Violence Theory, Queer Theory, and Feminist Legal Theory to look at sexual violence in Indian prisons.

First, Structural Violence Theory, which was started by Johan Galtung, shows how harm can come not just from direct violence, but also from unfair systems, unequal treatment, and poor policies.

In Indian prisons, things like too many prisoners, no way to report problems, caste-based rules, and no fair protection for everyone create a setting where abuse is common. Custodial rape isn't just about a single person's bad behaviour; it's often because of the way the system is set up, which keeps silence and makes abuse invisible.<sup>6</sup>

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<sup>6</sup> Johan Galtung, Violence, Peace, and Peace Research, 6 J. PEACE RES. 167, 171 (1969).

Next, Queer Theory looks at how society and the law treat people based on traditional ideas of being male or female. The new Indian law, Bharatiya Nyaya Sanhita, 2023, defines rape only in terms of a man and a woman, which makes male, transgender, and non-binary people who are victims legally unseen. Queer Theory shows how this exclusion keeps these groups from being treated fairly and makes them more vulnerable in prisons. It also shows how sexual violence in prisons is used to harm people who don't fit into traditional gender roles, using shame and being ignored as ways to control them.<sup>7</sup>

Then there's Feminist Legal Theory, which focuses on how laws show power imbalances, especially between men and women.

While feminist ideas have helped show that rape is about power and control, many traditional views only see women as the victims. This study uses feminist legal theory to look beyond that and includes males and transgender inmates. It shows how the law fails to protect these groups and argues for a fairer system that includes everyone, seeing sexual violence as a way to control people, no matter their gender.<sup>8</sup>

Together, these theories help us see that custodial sexual violence isn't just about individual actions; it's a bigger problem. This understanding helps the study find problems in the law and suggest ways to change things for the better.

## WHAT IS CUSTODIAL RAPE?

Custodial rape happens when someone who is in custody, like a prisoner, is harmed sexually by a person or institution that has control over them. The person in charge, called the custodian, has full authority over the individual and has a strong responsibility to protect and care for them. But sometimes, these people abuse their power and force female inmates to have sex with them. This act is known as custodial rape. It is a serious crime because the person using their power not only harms the individual, usually a woman, but also breaks their duty to take care of and protect people's rights and their bodies.<sup>9</sup>

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<sup>7</sup> JUDITH BUTLER, *GENDER TROUBLE* 33 (Routledge 1990).

<sup>8</sup> MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 7–8 (3d ed. 2012). See also, CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 161–62 (Harv. Univ. Press 1989).

<sup>9</sup> Rachit Garg, Custodial Rape: An Overview, iPleaders (blog), ¶ 10, <https://blog.ipleaders.in/custodial-rape/>.

## INTERNATIONAL TREATIES & CONVENTIONS

India has signed several international agreements to ensure that people in jail are treated fairly. These agreements include the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>11</sup>

These agreements affect the laws and policies in India related to the rights of prisoners and offer extra protection to those who are not free.

## ANTICIPATION OF INDIAN GOVERNANCE TOWARDS CUSTODIAL VIOLENCE:

Indian governance has recognised that custodial sexual abuse can happen to people while they are in custody in different contexts over the years, but existing laws remain limited in scope.

### 1. NHRC INTERVENTIONS-

The National Human Rights Commission has many times taken initiative on its own to look into reports of sexual attacks in prisons and sent out notices or conducted immediate checks. For instance, in December 2022, they looked into a case where a 22-year-old prisoner was sexually assaulted by other inmates in Tihar. These actions by the NHRC show that they recognize sexual violence in custody, including when men are the victims, and also show their role in keeping an eye on how prisons are run.<sup>12</sup>

The NHRC and Ministry of Home Affairs have sent out guidelines and letters stressing the need for quick reporting, medical checks, and proper investigation in cases of death or rape while in custody. This shows the government's direction at the state level, but there are still problems in carrying out these instructions.<sup>13</sup>

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<sup>10</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, accession by India Apr. 10, 1979).

<sup>11</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987, signed by India Oct. 14, 1997).

<sup>12</sup> Nat'l Human Rights Comm'n of India, *NHRC Notices to the Delhi Chief Secretary and the Director General of Prisons over the Reported Sexual Assault of a Prisoner by Fellow Inmates in Tihar Jail* (Jan. 2, 2023), <https://nhrc.nic.in/media/press-release/nhrc-notices-delhi-chief-secretary-and-director-general-prisonsover-reported>.

<sup>13</sup> Nat'l Human Rights Comm'n, *Selected NHRC Guidelines on Custodial Deaths and Rapes* 1–2 (Dec. 14, 1993), [https://www.mha.gov.in/sites/default/files/2022-12/NHRCselectedlettersandguidelinesondeathsincustody\\_09042019\\_0%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-12/NHRCselectedlettersandguidelinesondeathsincustody_09042019_0%5B1%5D.pdf).

## 2. LAW COMMISSION WORK-

Law Commission of India, 152nd Report on Custodial Crimes (1994) Examined torture, deaths, and sexual exploitation in custody; proposed mandatory medical examination, independent investigation, and presumption against custodial officers in cases of sexual abuse.<sup>14</sup>

Law Commission of India, 172nd Report on Review of Rape Laws (2000) Recommended gender-neutral definition of rape and expansion of protections to male victims; highlighted custodial settings as aggravated circumstances.<sup>15</sup>

## 3. LANDMARK CASES RELEVANT TO PRISONERS' RIGHTS-

**Sunil Batra v. Delhi Administration** is an important court ruling Supreme Court Laid down guidelines to prevent custodial torture, including arrest procedures, medical checks, and informing relatives.<sup>16</sup>

**In D.K. Basu v. State of West Bengal**, the Supreme Court set rules to prevent custodial torture, including arrest procedures, medical checks, and informing relatives.<sup>17</sup>

**In State of Andhra Pradesh v. Challa Ramkrishna Reddy**, the Supreme Court reaffirmed that prisoners do not lose fundamental rights except those restricted by law; custodial deaths violate Article 21.<sup>18</sup>

**D.M.K. Patnaik v. State of Andhra Pradesh**, The Supreme Court said that a prisoner doesn't lose basic rights just because they are in prison, except for those rights that are limited because of being incarcerated. The Court also said that treating someone in a cruel, unfair, or biased way is against the law.<sup>19</sup>

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<sup>14</sup> Law Comm'n of India, *One Hundred and Fifty-Second Report on Custodial Crimes* 32 (1994). (recommendation for mandatory medical examination).

<sup>15</sup> Press Info. Bureau, Gov't of India, *In Its 172nd Report the Law Commission Recommended Gender-Neutral Rape Law and Expansion of Custodial Rape Definitions under Sections 376, 376A–D* (Jan. 4, 2002), <https://archive.pib.gov.in/archive/releases98/lyr2002/rjan2002/04012002/r040120023.html>.

<sup>16</sup> *Sunil Batra v. Delhi Admin.*, (1980) 3 S.C.C. 488 (India).

<sup>17</sup> *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).

<sup>18</sup> *State of A.P v. Challa Ramakrishna Reddy*, (2000) 5 S.C.C. 712 (India).

<sup>19</sup> *D.M.K. Patnaik v. State of A.P.*, (1974) 3 S.C.C. 459 (India).

#### 4. REPORTS HIGHLIGHTING THE CUSTODIAL ABUSE-

National Human Rights Commission, Annual Report 2021–22. This report includes the NHRC's official data about deaths in custody, sexual abuse in custody, and the conditions in prisons throughout India for the year 2021–22. Although the sexual abuse data isn't broken down by gender, it still gives a statistical basis to show that sexual violence in custody remains a serious issue.<sup>20</sup>

National Human Rights Commission, Annual Report 2023–24. This is the most recent NHRC annual review, containing updated figures and case studies. It demonstrates that despite years of reporting, the NHRC still fails to present gender-neutral classifications in sexual violence cases.<sup>21</sup>

NHRC Notice to Govt. of Delhi in Alleged Sexual Abuse of Inmates (2023) This notice directly addresses an alleged case of sexual violence in Tihar Jail involving inmates. It shows NHRC's willingness to intervene in male inmate abuse cases, a rarity in official communications.<sup>22</sup>

The CHRI report, including the PUCL–Karnataka 2005 study, one of the first recorded accounts of violence against members of the *kothi* community in Bangalore Central Prison, which contained disturbing testimonies of sexual abuse and assault faced by LGBTI+ inmates. The CHRI also refers to the 2015 case in Mysuru Central Prison, where five transgender inmates reported sexual assault, harassment, and rape.<sup>23</sup>

### EXISTING LEGAL FRAMEWORK

#### THE PRISON ACT, 1894

The Prisons Act of 1894 is a main law that deals with how prisons are run and managed in

<sup>20</sup> Nat'l Human Rights Comm'n, *Annual Report 2021–22*

(2022), [https://nhrc.nic.in/sites/default/files/AR\\_20212022\\_EN.pdf](https://nhrc.nic.in/sites/default/files/AR_20212022_EN.pdf)

<sup>21</sup> Nat'l Human Rights Comm'n, *Annual Report 2023–24*, (2024), [https://nhrc.nic.in/sites/default/files/AR\\_20232024\\_EN.pdf](https://nhrc.nic.in/sites/default/files/AR_20232024_EN.pdf)

<sup>22</sup> PTI, NHRC Issues Notice to Delhi Government Over Reports of Sexual Assault on Inmate in Tihar Jail, DECCAN HERALD (Jan. 2, 2023, 12:28 IST), <https://www.deccanherald.com/india/nhrc-issues-notice-to-delhi-govt-over-reports-of-sexual-assault-on-inmate-in-tihar-jail-1177258.html>

<sup>23</sup> Arijeet Ghosh & Madhurima Dhanuka, *Lost Identity: Transgender Persons Inside Indian Prisons* 19, ¶ 2 (Commonwealth Human Rights Initiative, Nov. 27, 2020), <https://www.humanrightsinitiative.org/download/1606377171Lost%20Identity%20Transgender%20Persons%20in%20Indian%20Prisons.pdf> (last visited Aug. 14, 2025).

India. It sets out rules about how prisoners are grouped, how discipline is kept, what basic facilities are provided, and the process for releasing prisoners on parole or leave. The Act also explains what duties prison officials have and how they should handle complaints or issues raised by prisoners.<sup>24</sup>

## THE MODEL PRISON MANUAL

The Model Prison Manual was first created in 1979 and updated in 2016.

It gives guidance on how prisons should be managed and run in India. It highlights the rights of prisoners, such as access to medical care, legal help, education, and job training. Even though the Model Prison Manual isn't a law that must be followed, it helps state governments make their own rules and policies for prisons.<sup>25</sup>

## IMPLEMENTATION CHALLENGES

Despite existing prison regulations and human rights safeguards, translating policy into meaningful protection for male and transgender inmates remains fraught with obstacles.

Cultural Resistance inside Prisons - Many Scholars have noticed that Strong biases among prison staff and administrators can cause them to ignore cases of sexual abuse of men or transgender people, undermining the spirit of legal reforms.

Overcrowding and Logistical Constraints – Excessive inmate populations make it nearly impossible to segregate vulnerable individuals or ensure privacy in reporting and medical examination.<sup>26</sup>

Inadequate Medical Facilities – Lack of proper Medical Facilities increases the risk of untreated physical injuries and unaddressed psychological trauma.<sup>27</sup>

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<sup>24</sup> The Prisons Act, No. 9 of 1894, INDIA CODE, <https://legislative.gov.in/sites/default/files/A1894-09.pdf>.

<sup>25</sup> Press Info. Bureau, *Union Home Minister Approves New Prison Manual, 2016*, Gov't of India (Jan. 21, 2016), <https://www.pib.gov.in/newsite/erecontent.aspx?relid=134687>

<sup>26</sup> Nat'l Human Rights Comm'n, *Three-Day Workshop for Sensitising Prison Officials* ¶ 3 (Feb. 28–Mar. 1, 2000), <https://nhrc.nic.in/press-release/three-day-workshop-sensitising-prison-officials> (last visited Aug. 14, 2025).

<sup>27</sup> NHRC workshop, *ibid* at para 3



## GAPS IN BHARTAYA NYAYA SANHITA (BNS)

Chapter V Section 63 of the *Bharatiya Nyaya Sanhita, 2023* explains rape in the following terms: A man is said to have committed "rape" if he: (a) uses his penis, even a little, to go into a woman's mouth, vagina, urethra, anus, or makes her do that with him or someone else; or (b) puts any object or body part other than his penis, even a little, into a woman's vagina, urethra, or anus of a woman, or makes her do that with him or someone else; or (c) touches a part of a woman's body in a way that causes penetration into her vagina, urethra, anus, or another part of her body, or makes her do that with him or someone else; or (d) puts his mouth on a woman's vagina, anus, or urethra, or makes her do that with him or someone else, in any of these situations: (i) when she does not want to; (ii) without her agreement; (iii) with her agreement, but she was scared of death or harm because of him or someone she cares about; (iv) with her agreement, but she thought he was someone else she was married to; (v) with her agreement, but she couldn't understand what she was agreeing to because of a mental condition, being drunk, or because she was given something that makes her drowsy or unhealthy; (vi) if she can't say yes because she is unable to give consent.<sup>28</sup>

A striking limitation in Chapter V, Section 63<sup>29</sup> is that the definition of rape begins with "a man" as perpetrator and victimizes "her" as a woman. This gendered framing presumes that only men can commit rape and only women can be victims. Such a definition excludes male, transgender, and non-binary survivors from the ambit of rape law, leaving them either without recognition or confined to lesser provisions. This gap is especially concerning in light of constitutional guarantees that apply to all persons under Articles 14 and 15,<sup>30</sup> and the Supreme Court's recognition of a constitutionally protected third gender in *NLSA v. Union of India* (NALSA).<sup>31</sup> The drafting also disregards earlier reform debates, most notably the 172nd Law Commission Report<sup>32</sup> and the Justice Verma Committee Report (2013),<sup>33</sup> both of which considered broader, gender-neutral definitions of sexual offences.

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<sup>28</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 63 (India).

<sup>29</sup> *ibid*

<sup>30</sup> INDIA CONST. arts. 14–15.

<sup>31</sup> *Nat'l Legal Servs Auth. v. Union of India*, (2014) 5 S.C.C. 438 (India).

<sup>32</sup> Law Comm'n of India, *172nd Report on Review of Rape Laws* (2000).

<sup>33</sup> Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

Sodomy, which was earlier criminalized under Section 377<sup>34</sup> of the IPC, currently finds no direct equivalent provision under the *BNS*. The *BNS*, which replaces the *IPC*, fails to directly address non-consensual same-sex sexual assault, particularly within carceral spaces. The absence of a provision criminalizing such acts leaves male and transgender inmates with virtually no legal recourse in situations of custodial rape or abuse.

The law often sees the world in binaries: man or woman, male perpetrator or female victim. But life, and pain, doesn't work that way. Many people live outside these boxes, yet the legal system struggles to see them. *Queer theory*<sup>35</sup> helps us understand why. It tells us that society and, by extension, the law, is built around an idea that only certain identities matter: heterosexual, cisgender, conforming.

Unless Parliament passes clear, targeted provisions to define and punish such acts, these cases will keep occurring, and police and prison authorities may fail to respond properly. Rising accounts of sexual harassment directed at male prisoners across Indian jails highlight why custodial safety rules must embrace all genders rather than focus on women alone.

### Comparison: IPC Section 377 vs Bharatiya Nyaya Sanhita (BNS), 2023

Aspect	IPC (Section 377)	BNS, 2023
Wording	“Anyone who willingly engages in sexual activity in a way that goes against the order of with any man, woman or animal...” <sup>36</sup>	No direct equivalent section. <sup>37</sup>
Consensual same-sex relations (adults)	Criminalized until 2018; decriminalized by Navtej S. Johar v. Union of India	Not criminalized (no mention in BNS).

<sup>34</sup> Bharatiya Nyay Samhita Bill Scraps ‘Unnatural Sex’ Offence, ECON. TIMES (Aug. 13, 2023), ¶ 2, <https://economictimes.indiatimes.com/news/india/bharatiya-nyaya-sanhita-scraps-unnatural-sex-offence-in-amove-away-from-colonial-laws/articleshow/102692857.cms>

<sup>35</sup> Supra note 7

<sup>36</sup> Supra note 4

<sup>37</sup> Supra note 31

	(2018). <sup>38</sup>	
Non-consensual unnatural acts (rape/assault)	Punishable under Section 377.	Defines rape, but only when committed by a man against a women.
Acts with minors	Punishable under Section 377 (and also POCSO Act <sup>39</sup> , 2012).	Punishable under Section 63 BNS + POCSO (still in force).
Status today	Section 377 IPC exists on paper but read down, only applies to non-consensual acts, minors, and bestiality.	No Section 377; relevant provisions distributed under specific BNS sections.

### INTERNATIONAL COMPARISON: HOW INDIA FALLS BEHIND

Although sexual violence in jails is not a problem that only affects the people of India, how other nations handle it has a significant impact. Regardless of the victim's gender or sexual orientation, specific legislation and institutional safeguards have developed in a number of jurisdictions, particularly liberal democracies, to stop this kind of abuse. India, in comparison, still uses antiquated detention procedures that say nothing about non-consensual same-sex violence.

In the *United States*, the government passed a law more than two decades ago, the Prison Rape Elimination Act (PREA), 2003, with one clear message: No one deserves to be raped in prison. Not because of who they are. Not because of what they've done. PREA made it mandatory for every jail to be audited. It forced prison authorities to listen, to train their staff, to protect people,

<sup>38</sup> Supra note 5

<sup>39</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012 (India).

especially those most at risk, like transgender inmates or gay men. If someone was hurt, they could speak up. If someone was vulnerable, they were moved. There was a system.<sup>40</sup>

In the *United Kingdom*, prison officers are trained to recognize trauma. Transgender inmates are not just tossed into any cell; they are assessed, heard, and sometimes placed where they feel safest, even if it means breaking old rules. There's still violence, yes. But there's also accountability. There's a will to protect, even when the person is behind bars.<sup>41</sup>

Even in *Canada*, CSC Directive 100<sup>42</sup> allows transgender inmates to be placed in institutions consistent with their self-identified gender, access gender-affiliated clothing and pronouns, and avoid misgendering or forced anatomical housing unless entirely unavoidable due to safety concerns.

Meanwhile, Directive 574<sup>43</sup> says there's no room for sexual coercion or assault, and it requires that any such incidents be reported right away and investigated properly. As a result, Canada maintains grievance channels, mandatory staff training, and case-by-case protocols to uphold dignity and reduce violence even in custody.

However, if we look at India, if you are a transgender person behind bars, you will be locked in a male ward, assaulted, or worse, left without even basic medical care. If you are a man who is raped in prison, the law doesn't recognize you. You don't exist in the system. No grievance cell. No trained staff. No national law. No protection.

## RECENT DEVELOPMENTS

On August 28, 2024, the Delhi High Court dealt with a public interest litigation (PIL), *Gantavya Gulati v. Union of India*<sup>44</sup>, that called for including non-consensual "unnatural sex" offences previously covered under IPC Section 377 in the newly passed *Bharatiya Nyaya Sanhita*

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<sup>40</sup> Prison Rape Elimination Act of 2003, 42 U.S.C. §§ 15601–09 (2006).

<sup>41</sup> Prisons & Prob. Ombudsman, *Learning Lessons Bulletin: Sexual Abuse in Prison*, ¶ 2, [https://www.ppo.gov.uk/learning\\_research/learning-lessons-bulletin-issue-1-sexual-abuse-in-prison/](https://www.ppo.gov.uk/learning_research/learning-lessons-bulletin-issue-1-sexual-abuse-in-prison/).

<sup>42</sup> Correctional Servs. Can., Commissioner's Directive 100: Gender Diverse Offenders ¶¶ 5–8 (May 9, 2022), <https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissionersdirectives/100.html>

<sup>43</sup> Correctional Servs. Can., Commissioner's Directive 574: Sexual Coercion and Violence ¶¶ 10–15 (2022), <https://www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissionersdirectives/574.html>

<sup>44</sup> *Gantavya Gulati v. Union of India*, W.P.(Crl.) No. 2474 of 2024, 2024 SCC OnLine Del 5990 (Del. H.C. Aug. 28, 2024).

(BNS), 2023. The court, which included CJ Manmohan and Justice Tushar Rao Gedela, said there can't be a gap in criminal law. They asked a thoughtful question: *"What people are really asking is not to punish consensual (unnatural) sex. You have made even non-consensual (unnatural) sex not punishable. Suppose something happens outside the court today, are we all supposed to look the other way because it's not in the law?"*<sup>45</sup>

The court told the Union of India to treat the PIL as an important input and asked for a quick decision, ideally within six months. The judges even suggested using an ordinance if needed to prevent any delays in the law. The government said it understands the need to look at the issue from all sides and is gathering opinions from different groups before making a decision. The court also gave the petitioner the freedom to bring the case back if the government doesn't act quickly.

Government's Response So far,

The government has only admitted the problem and said it is taking a comprehensive approach. There is no public information showing that the government has taken real steps, like passing an amendment, issuing an ordinance, or giving any official instruction, to fix the missing part in the BNS. As of now, there are no updates from Parliament, the Ministry of Home Affairs, or official gazettes indicating that the six-month period has been used up or that a decision has been made.

## RECOMMENDATIONS

### 1. NEED FOR GENDER NEUTRAL CUSTODIAL LAWS

India doesn't just need more laws, it needs laws that see every person with equal worth. What we need now is a gender-neutral law against custodial sexual violence, one that clearly and explicitly protects male, female, and transgender inmates from abuse. Because dignity behind bars should not depend on gender. Protection should not be selective. And justice should not come with conditions.

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<sup>45</sup> Plea Flags Exclusion of Penalty for Unnatural Sex, Court Asks Centre to Decide, INDIA TODAY, Aug. 29, 2024, ¶ 5, <https://www.indiatoday.in/law/story/delhi-high-court-plea-penalty-unnatural-sex-sodomy-bns-centre2590048-2024-08-29>

While traditional *feminist legal theory*<sup>46</sup> has powerfully exposed how the law reflects patriarchal structures, it has often centred only cisgender women as victims of violence. However, expanding the framework toward gender justice reveals a deeper gap in how current laws erase male and transgender survivors by relying on outdated binaries. Reform must not come at the cost of women's protections but should broaden protections to all victims, regardless of gender identity.

The Supreme Court's ruling in the *NALSA v. Union of India*<sup>47</sup> clearly recognised transgender persons' right to life, dignity, and self-identified gender, affirming that the State must ensure their safety, inclusion, and equality. Yet, the prison system remains blind to these identities. Transgender inmates are often placed in male prisons by default, exposing them to high risks of custodial rape, humiliation, and abuse. This failure of implementation not only violates Article 21<sup>48</sup> but also contradicts the spirit of *NALSA*, reducing constitutional rights to mere paper promises within the carceral state.

This change doesn't require complexity. Parliament could amend the *Bharatiya Nyaya Sanhita* that clearly names and punishes custodial sexual violence.

## 2. INDEPENDENT GRIEVANCE REDRESSAL MECHANISMS

Prisons need independent grievance cells where inmates can report abuse without fear of retaliation. These must be overseen by people outside the prison system, like human rights commissions or local judges, because no one should be forced to seek justice from those they fear.

## 3. AI-ENABLED OVERSIGHT

AI can play a powerful role in amplifying the voices of prisoners who face sexual assault, but only if it's designed and deployed ethically, transparently, and accessibly.

For survivors of sexual violence behind bars, especially men and transgender persons, speaking up is dangerous, but what if we could create a system that doesn't flinch, doesn't judge, and

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<sup>46</sup> Supra note 8

<sup>47</sup> Supra note 31

<sup>48</sup> INDIA CONST. art. 21.

most importantly, doesn't stay silent?

This is where Artificial Intelligence enters the picture, not as a saviour, but as a listener. As a witness. As a bridge between the unheard and the ones who can act.

The Supreme Court of India has launched an AI system known as *SUPACE*, which is the Supreme Court Portal for Assistance in Court Efficiency, which aids judges by transcribing hearings, translating judgments, detecting case filing defects, and summarising facts. SUPACE enhances administrative efficiency in an overburdened judiciary.<sup>49</sup>

But if a machine can help a judge feel less overwhelmed, can it also help a prisoner feel less alone?

An AI doesn't get uncomfortable. It doesn't carry bias.

This isn't about technology saving us. It's about technology showing up where people have walked away. It's about building a digital presence, maybe, but one that stays when others leave. One that records the truth even when it's painful. One that never looks away.

#### **4. Ways AI Can Help Address Sexual Violence in Prisons-**

**Anonymous and Safe Reporting Systems** - AI-powered kiosks or voice interfaces can allow inmates to report abuse confidentially and safely. These systems can operate in multiple languages, avoid human biases, and instantly forward complaints to external oversight bodies protecting the survivor's identity while triggering timely intervention.

**Surveillance with Accountability**- AI can be integrated with prison CCTV systems to detect unusual or violent behaviour such as crowding, isolation, or physical assault. This allows authorities to respond in real time and helps prevent abuse.

**Legal Aid Access and Digital Assistance**- AI tools such as chatbots or voice-guided assistants can help inmates draft complaints, request legal aid, or understand their rights.

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<sup>49</sup> Use of Artificial Intelligence in Supreme Court, Press Info. Bureau (July 2025), <https://pib.gov.in/PressReleasePage.aspx?PRID=2113224>.

Pattern Recognition for Systemic Abuse- AI can analyze complaint data, disciplinary records, and medical reports to identify recurring patterns such as repeated allegations against specific wardens or in certain jail blocks. This transforms scattered complaints into actionable evidence.

Direct Alerts to External Oversight- AI tools can be programmed to bypass internal prison hierarchies and send alerts directly to human rights commissions, legal aid authorities, or courtappointed monitors, ensuring complaints reach people in power even if local officials are complicit.

## 5. To the Ministry of Health and the Ministry of Home Affairs

Make sure that healthcare workers and police officers are trained to help people who have been traumatized, including those who have been raped or are victims of sexual violence. This training should cover how to properly care for male survivors of sexual assault and how to identify them.

## CONCLUSION

Not all violence looks like bruises or blood. Some of it hides in silence, in delay, in the daily humiliations that no one sees and no one stops. It's in the overcrowded prison ward where bodies are crammed with no space to sleep.

*Johan Galtung* calls this structural violence a kind of suffering that doesn't come from a single person's hand, but from the system itself. It's the violence of neglect, the kind that doesn't scream, but settles in over time. The violence of indifference. Of institutions never designed to protect the vulnerable.<sup>50</sup>

The stories that emerge from behind prison walls rarely reach the public in their full truth. They are muffled by stigma, buried under bureaucracy, and softened by language that strips them of urgency. Even after the landmark *Navtej Singh Johar*<sup>51</sup> ruling and the enactment of the *Bharatiya Nyaya Sanhita*, it fails to account for non-consensual same-sex violence within custodial spaces. Male survivors remain legally invisible. Transgender prisoners, who are often misgendered and shoved into the wrong cell block, face even uglier kinds of mistreatment. Cramped barracks, overworked medical wards, and rigid caste and class power structures create

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<sup>50</sup> Supra note 6

<sup>51</sup> Navtej Singh Johar, supra note 5



an environment where sexual abuse moves from shocking incident to everyday reality that people refuse to talk about. Add still-missing gender-neutral rape laws, a grievance system that buries complaints, and the total absence of elementary harm-reduction tools, and that poisonous norm deepens further. For a nation that loudly claims to uphold constitutional morality and personal dignity under Article 21, allowing such silence to settle is no mere legal gap; it is a clear moral failing.

It is telling that, despite repeated media reports, NHRC notices<sup>52</sup>, and survivor accounts of sexual violence against male and transgender inmates, there is no known case in Indian jurisprudence where a perpetrator has been convicted for M2M custodial sexual assault against such individuals. This absence does not reflect a lack of abuse; it reflects a legal system that has not yet acknowledged the possibility that men and transgender persons can be victims of sexual violence, especially in prison settings. The silence of the courts, combined with gaps in the Bharatiya Nyaya Sanhita, leaves these survivors without a voice, remedy, or recognition.

The real problem is not whether reform is needed; mounting evidence has already closed that debate. The harder, far scarier question is whether we, as a society, are prepared to look directly at the pain of people we have locked away and admit they, too, deserve safety, dignity, and real justice.

Until that painful truth is turned into binding laws, clear policy, and everyday practice, the violations will keep happening and, even worse, they won't just be crimes of violence, they'll be indictments of our silence.

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<sup>52</sup> NHRC issues notice, *supra* note 22