
DECOLONIZING SHADOWS: THE PERSISTENT GENDERED FRAMEWORK OF RAPE IN INDIA'S NEW CRIMINAL LAW

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ABSTRACT

The recent omission of an equivalent Section or Section 377 of IPC from BNS has created an uproar in Indian Society as this section was the only resort for men from the protection against sexual assault. From the bare reading of the definition encapsulated in Section 63 of BNS, 2023 [Sec 375 of IPC], it can be construed that the offence of rape can only be committed against a female with genitalia and not against any other gender. This definition acquiesces the gender-specific traditional norms that must be done away with. The exclusion of any provision for the protection of men against sexual assault is worse than abhorrence as it excludes or ignores a particular gender from protection. Notwithstanding our criminal justice system is on the back burner to recognize the sexual assault against men, contemporary society has begun to acknowledge that men can be victims of rape.

This paper critically examines these changes and advocates for a more inclusive legal framework that transcends the traditional male-on-female victim-perpetrator model. By exploring the international perspective and comparing legal standards across different jurisdictions, the paper seeks gender neutrality in the sexual-assault provisions and reforms in the recently implemented Bharatiya Nyaya Sanhita, 2023. The argued framework aims to ensure that all individuals, regardless of gender, are equally protected under the law, thereby promoting a more just and equitable legal system.

Keywords: Gender Neutrality, Men's Right, Protection against sexual assault, Section 377 IPC, Legal Reform.

INTRODUCTION

The Bharatiya Nyaya Sanhita¹ which replaced the Indian Penal Code deleted Section 377.² Section 377 of the IPC states that “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 2 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.³ This section was partially struck down by the infamous case of *Navtej Singh Johar v. Union of India*⁴, decriminalising the consensual homosexual acts between adults by declaring the provision irrational, indefensible and manifestly arbitrary.

Section 377 of the IPC provides protection to adult males from sexual offences.⁵ The removal of the same means that men will lose their right of protection from any sexual harassment. With the implementation of BNS, it can be construed that BNS only penalizes the rape committed by a man against a woman and not otherwise.

Recently, *a man from Jalandhar, Punjab* was repeatedly raped by four women after dozing him off with the drugs.⁶ *JD(S) MLC Suraj Revanna* has allegedly sexually assaulted male party worker.⁷ *In June 2024, a 23-year-old man committed suicide after being sexually assaulted by 4 men.*⁸

These incidents not only illustrate the growing prevalence of sexual assault of men in contemporary society but also shed light on the complex legal and social factors contributing to the exacerbation of these occurrences. However, the law enforcement agencies have been

¹ The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 63–65, *Gaz. of India*, Dec. 25, 2023 (India) (promulgated by the Ministry of Home Affairs).

² Ministry of Home Affairs, *New Criminal Laws* (Bharatiya Nyaya Sanhita, 2023), available at <https://www.mha.gov.in> (India).

³ Indian Penal Code, 1860, § 377 (Act No. 45 of 1860) (India).

⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

⁵ The Indian Penal Code, 1860, Act No. 45 of 1860, *Gaz. of India*, Oct. 6, 1860 (India) (archival text) (Law Comm'n of India ed.).

⁶ *Jalandhar Man Alleges He Was Kidnapped, Gang-Raped by Four Girls in Their 20s*, Times Now (2022), <https://www.timesnownews.com/crime/jalandhar-man-alleges-he-was-kidnapped-gang-raped-by-four-girls-in-their-20s-article-95732303>.

⁷ *Suraj Revanna Held for Sodomising JD(S) Worker*, Times of India, June 10, 2024, <https://timesofindia.indiatimes.com/t10-june-24-2024/4-now-suraj-revanna-held-for-sodomising-jds-worker/articleshow/111210524.cms>

⁸ *Man, 23, Dies by Suicide After Sexual Assault by 4 Men, 3 Arrested, Cops*, NDTV (June 17, 2024), <https://www.ndtv.com/india-news/man-23-dies-by-suicide-after-sexual-assault-by-4-men-3-arrested-cops-5911651>.

refraining from criminalizing the offence of rape against men. The silence towards men's sexual assault is due to two reasons:

1. Men are considered to be efficient and strong enough to protect themselves.
2. Societal Stereotype that a woman cannot compel a man to do anything against his consent.

UNDERSTANDING THE CONCEPT OF RAPE

Rape can be defined as a forceful intercourse between two individuals without the person's consent.⁹ However, in India, Rape is defined in Section 63 of BNS¹⁰ [Section 375 of IPC] as "when a man penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person". The definition provides a clear explanation that the offence of rape can only be committed by a man against a woman and not otherwise. Therefore, Indian Laws do not provide any protection to an adult male from the sexual offences.¹¹

MEN CAN BE THE VICTIM AND WOMEN CAN BE THE PERPETRATOR

The social stigma associated with the offence of rape fails to consider men as the victim as their identity is attached with the "want of pleasure". Recently, Kerela High Court pronounced that 'A woman cannot be charged with sexual harassment under the IPC Section 345A even if the alleged offence was committed against another woman, while citing that the legislature diligently used the term 'a man' instead of any person in the statutory provision and the legislature intent is to exclude woman/women from the purview of Section 345A'.¹² However, a woman is as much capable of committing rape as a man and the same can be corroborated with the recent news where a man in Jalandhar was kidnapped and gang-raped by the four women.¹³ Therefore, it is quintessential for the Parliament to acknowledge the requirement of

⁹ Jonathan Herring, *Rape and the Definition of Consent*, NLS Institution Repository, <https://repository.nls.ac.in/nlsir/vol26/iss1/3> (last visited Aug. 6, 2025).

¹⁰ Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63, *Gaz. of India*, Dec. 25, 2023 (India).

¹¹ Nikunj Kulshreshtha, *An Assessment of the Arguments Against Gender Inclusivity in Rape Law in India*, 15 Oñati Socio-Legal Series 1052 (2025)

¹² *Women Can't Be Booked for Sexual Harassment under Indian Penal Code: Kerala High Court*, Scroll.in (Aug. 18, 2024), <https://www.scroll.in/latest/1072160/women-cant-be-booked-for-sexual-harassment-under-indian-penal-code-kerala-high-court>.

¹³ *Times Now*, *supra* note 6.

amendments in the traditional concept of rape and introduce gender-neutral laws to protect all the genders from the formidable sexual assault.

RESEARCH METHODOLOGY

The said research is conducted using doctrinal and qualitative research methodology, which involves the collection of information from numerous distinct research journals, comparative analysis of different countries and comments of prominent scholars on the said research topic.

LITERATURE REVIEW

In paper¹⁴ titled, *In Defence of Gender Neutrality Within Rape* the author argues for gender neutrality in rape laws. He engages with the common objections which are raised to gender neutral rape statute. He discusses that gender neutrality in rape statutes is necessary to modern understandings of rape as violation of sexual autonomy and not merely a gendered attack. The opposition to this idea of neutrality stems from theoretical biases without substantial empirical support.¹⁵ He provides a thorough analysis of existing research on male victimization and female perpetration and diminishes the recognition of traditional definition of male-on female rape scenario. He stresses that gender-neutral law aim to describe criminal behaviour accurately without disregarding the gendered perception of rape i.e. do not prevent the legal system from addressing the specific needs of female victims. Gender neutrality will lead to a reduction in the stigma associated with male victimization and will be a key in creating and promoting a more equitable legal system.¹⁶ He further calls for continued discussion and research to ensure that rape laws adequately reflect the realities of all victims while maintaining sensitivity to the gendered nature of most sexual assault cases.

In paper¹⁷ titled *Binary: Rethinking Gender Neutrality in Indian Rape Law*, the author critiques the gender-specific definition of rape within Indian law. He argues that such a definition upholds a binary and rigid perspective on gender that fails to encompass the rights and experiences of all individuals, especially men and transgender individuals remain excluded

¹⁴ Philip N. S. Rumney, *In Defence of Gender Neutrality Within Rape*, 6 *Seattle Journal for Social Justice* (2007), available at <https://digitalcommons.law.seattleu.edu/sjsj/vol6/iss1/40>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Harshad Pathak, *Beyond the Binary: Rethinking Gender Neutrality in Indian Rape Law*, 11 *Asian J. Comparative L.* 367 (2016).

from its protective scope.¹⁸ He examines the impact of the Criminal Law (Amendment) Act 2013, which broadened the definition to include non-penile forms of penetration but failed to address the pertinent question of other genders being excluded. His thorough analysis shows the failure of the justice system for its inertia in recognizing the diverse identities and experiences of individuals who do not fit in the traditional victim-perpetrator model of sexual offences. He argues that rape should be seen as violation of bodily autonomy and privacy rather than attaching it to an attack on chastity and honour. He advocates for a shift in the definition of rape, that is to remove the gender biases in identifying the victims and perpetrators and reflect a more modern understanding of gender and sexuality.¹⁹ He further discusses the stance of other jurisdictions that have adopted gender-neutral rape laws, suggesting that India's approach is both outdated and out of step with international human rights norms.

In this paper²⁰, the author discusses the examination of Section 377 by the Supreme Court in the case of Navtej Singh Johar. The judgement decriminalized the partial section which criminalized consensual sexual intercourse between people of the same sex as an "unnatural offense". It had a colonial origin, which reflected the Victorian moral standards that deemed homosexuality unnatural. The Supreme Court, in its judgement highlighted that constitutional morality, not social morality, should guide the interpretation of laws. It noted that laws and societal norms enforced under the banner of social morality are often at odds with principles of equality, liberty and non-discrimination.²¹ The author highlights that the partial Section 377 was retained for protecting individuals and minors against non-consensual sexual acts. The retention highlighted that any non-consensual conduct is a breach of an individual's right, which must be penalized under the law and ensure that the victim of their legal remedy.²²

In another paper²³ titled as *Men's Rights in India-Gender Biased Laws*, the authors argue that while gender equality is a stated goal of the Indian constitution, its implementation is hampered by laws biased against men. They discuss how existing gender biased laws disadvantage men within the legal framework, particularly with domestic abuse allegations,

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ "Navtej Johar v. Union of India: Love in Legal Reasoning," *NUJS Law Review*, (available at <https://nuslawreview.org/wp-content/uploads/2020/01/12-3-4-Chaudhary.pdf>).

²¹ Ibid.

²² *Analysing Section 377 of the Indian Penal Code (IPC)*, SSRN (2024), <https://papers.ssrn.com/sol3/Delivery.cfm/5020046.pdf?abstractid=5020046>.

²³ *Men's Rights in India-Gender Biased Laws*, IJSR, <https://www.ijsr.net/archive/v12i4/SR22114163536.pdf>

where men are often perceived as perpetrators rather than potential victims. They further argue that the women-centric policies introduced to balance gender disparities have evolved in a manner that sometimes makes men feel unfairly targeted. They advocate for recognizing male victimhood in areas of domestic violence, sexual harassment, and rape. They propose that laws be rewritten to be gender-neutral to ensure fairness and justice for all genders.²⁴

In this article²⁵, the writer examines the legislative landscape surrounding rape in New Zealand and focuses on how it is impacting transgender and intersex people. She offers a critical examination of the 2005 legislative decision that kept rape a crime that was exclusive to one gender. Meaning that only women who had female genitalia could be considered victims, and only men could be looked at as an offender. She contends that this definition falls short of capturing the realities of the transgender and intersex populations, whose experiences with sexual assault frequently go ignored and unaddressed by the laws in place. She underlines the larger trend in common law jurisdictions toward more inclusive definitions of sexual offences that recognize the harms suffered by individuals regardless of gender. She contrasts these approaches with New Zealand's statutory framework, which she claims maintains a binary and gendered understanding of sexual violence.²⁶ She further highlights how feminist perspectives that emphasizes the gendered nature of sexual violence conflict with the idea of gender neutral laws that recognizes the experience of all victims, regardless of gender. It serves as a call to action for policymakers to reform rape legislation, and make it inclusive of all gender identities, which will ensure that all victim of sexual violence receive recognition and justice under the law.

In this article²⁷, the authors delve into the significant differences between rape laws about men and women in India, examining the legislative frameworks through a gender-neutral lens. The paper underscores the disparity in protection against rape afforded to men compared to women, which raises question about equality within the law and violation of Article 14 of the Constitution, when such definition is framed without reasonable nexus. They argued that the

²⁴ Ibid.

²⁵ Elisabeth McDonald, *Gender Neutrality and the Definition of Rape: Challenging the Law's Response to Sexual Violence and Non-Normative Bodies*, [2019] Univ. of Washington L. Rev. (16) (2019), <https://classic.austlii.edu.au/au/journals/UWALawRw/2019/16.pdf>.

²⁶ Ibid.

²⁷ *A Comparative Study of Rape Legislation for Men and Women in India*, 5 IJFMR, Issue 6 (2023), <https://www.ijfmr.com/papers/2023/6/9914.pdf>.

2013 reform²⁸ failed to adequately address the gendered provision of rape within the Indian Penal Code. The gender-specific laws concerning sexual offences focus predominantly on women as victims and men as perpetrators without acknowledging the presence and suffering of male and transgender victims of sexual assault. The authors propose that the rape laws should be redefined in gender-neutral terms to ensure that all victims receive equal protection under the law, thereby upholding the principles of equality enshrined in the Indian Constitution.²⁹

CRITICAL ANALYSIS

Since the very beginning, the sexual abuse was a way of pleasure and rapture for a man rather than an offence against a woman. However, the feminist movement in the 20th century advocated highlighting the suffrage of woman and requested for the societal and moral consideration for woman for woman's right and seek the assistance from the state to provide adequate facilities to the rape victims stating that "RAPE IS VIOLENCE, AND NOT SEX".³⁰ The very commendable moment led to the revolutionary thinking to create legislation protecting the modesty of a woman.

In India, we have witnessed numerus tremendous shifts in the rape laws from the original definition specified in the Section 375 of the Indian Penal Code of 1860³¹ to the Section 63 of the Bharatiya Nyaya Sanhita of 2023³². Let's look deeper into the definition of rape.

Section 63 of the BNS defines the offence of Rape against a woman as³³:

"A man is said to commit "rape" if he

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina,

²⁸ Justice J.S. Verma, Leila Seth & Gopal Subramanium, *Report of the Committee on Amendments to Criminal Law* (Jan. 23, 2013) ("Justice Verma Committee Report"), available at <https://adrindia.org/sites/default/files/Justice%20Verma%20Committee%20Report%202013.pdf>.

²⁹ Ibid.

³⁰ R. Whisnant, *Feminist Perspectives on Rape*, *Stanford Encyclopedia of Philosophy* (2009), <https://plato.stanford.edu/entries/feminism-rape/>.

³¹ Indian Penal Code, 1860, § 375 (Act No. 45 of 1860) (India).

³² Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63, *Gaz. of India*, Dec. 25, 2023 (India).

³³ Ibid.

the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person”

This definition of rape was amended by Criminal Law (Amendment) Act, 2013³⁴ wherein they recognized the non-penetrative sexual acts. The above section penalizes only a man for the commission of rape as against the woman believing that women can't be the perpetrator of the rape. However, even after a decade later they failed to amend the provision with the change in societal needs.

The Men's Rights Movement in India can be traced back to in 1920s to challenge the excess of women's freedom.³⁵ However, it was amended lately to raise awareness that men are also the victims of sexual harassment. Recently, there have been movements such as '#Men Too' as a reply to the '#Me Too' movement by the feminists.³⁶ However, it is to understand that when men are raising their voice regarding their horrendous sexual abuse experiences, they're really suffering.

As specified in the report of the National Sexual Violence Resource Center, “43% of men have experienced any form of sexual harassment or assault during their lifetime across the country.³⁷ They further elaborated that appx. 1 in 21 men have reported that they were coerced to penetrate someone else during their lifetime against their consent.” However, there are still fewer than 50% of cases registered in the Police Station. The issue of gender neutrality was first raised in the case of *Sudesh Jhaku v. KC Jhaku*³⁸ and *Sakshi v. Union of India*³⁹, wherein the Hon'ble

³⁴ Supra 28.

³⁵ Supra 23.

³⁶ Adrija Dey & Kaitlynn Mendes, “*It Started with This One Post*”: #MeToo, India and Higher Education, 31 *J. Gender Studies* 204 (2022), <https://doi.org/10.1080/09589236.2021.1907552>.

³⁷ National Sexual Violence Resource Center, *How Common Is Sexual Harassment?*, NSVRC (2024), <https://www.nsvrc.org/questions/how-common-sexual-harassment>.

³⁸ *Sudesh Jhaku v. K.C.J.*, 62 DLT 563 (Delhi High Ct. 1996) (India).

³⁹ *Sakshi v. Union of India* — (2004) 5 SCC 518 (India).

Delhi Court recognized the requirement of gender-neutral laws and protection of men against sexual offences.

The judiciary and legislature are silent on providing any kind of legal shield to the men victim even after the recommendation of the 172nd Report of the Law Commission of India⁴⁰ to make sexual offences gender neutral, considering and protecting every gender. The recommendation of gender-neutral laws was formalized into the Criminal Law (Amendment) Bill, 2012. However, the same could not be passed as the society was shocked and up roared by the gang-rape of Nirbhaya, wherein the Justice Verma Committee favoured the existence of the gender-neutral definition of rape emphasizing the men as perpetrator only. Due to the nation's upheaval for the justice for Nirbhaya, the Parliament enacted Criminal Law (Amendment) Act, 2013⁴¹ and retained the non-gender-neutral definition for rape.

With the enactment of the Bharatiya Nyaya Sanhita, 2023, replacing a century old law, it was expected that the act would explicitly provide penalization for rape against man. However, the act completely omitted Section 377 of IPC or any equivalent section, negating the acknowledgement of the offence of rape against men.⁴² The Bharatiya Nyaya Sanhita, an all-encompassing act fails to provide any legal recourse to the men, transgenders from the protection of sexual abuse. The young men under the age of 18 are protected from sexual offences under Protection of Children from Sexual Assault Offences Act, 2012 (POCSO)⁴³ and the transgenders are protected under The Transgender Persons (Protection of rights) Act, 2019⁴⁴ but there is no legal recourse available protection an adult male from the sexual offences.

WHY DISINCLINATION TOWARDS MEN'S RIGHT TO PROTECTION AGAINST SEXUAL OFFENCES?

The victims of the sexual offences are not only limited to women but also include men, transgender individuals, or any other human being. There are more men's victims than we are aware of. The sexual offence against women is more prevalent in news or articles rather than

⁴⁰ Law Commission of India, *172nd Report on the Review of Rape Laws* (2000), available at <https://lawcommissionofindia.nic.in/rapelaws.html>.

⁴¹ Supra 28.

⁴² Supra 3.

⁴³ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, *Gaz. of India*, June 20, 2012 (India).

⁴⁴ Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, *Gaz. of India*, Dec. 5, 2019 (India).

sexual offences against men; therefore, the laws created in society favour women. However, there are numerous reasons that men's sexual harassment dodged from news, articles or the eyes of society. The primary reason that sexual offences against men are not discussed is due to the contemptuousness by society. As the society resolutely believes that men are robust creatures who can rape but can't be raped. The social stigma revolving around men that they are in a dominant position over anyone, and that they can't be coerced. That the real men's manhood might be defeated if they are raped. The lack of any substantive evidence of the men being raped. The absence of societal acceptance for the raped men. The absence of any legal recourse for men to protect themselves. Lack of reporting of men's rape. These are numerous examples explaining the reluctance for non-acceptance of men as a victim of rape. The lack of societal and legal acceptance towards men being raped makes it strenuous for a man to accept the situation and apprehend them to report against the perpetrator.

The society, the legal luminaries, the legislators must understand that men can be victims of the rape too, that men can be raped by a man, a woman, or by penetration of any object without his consent. They must understand that a men can be coerced to engage in sexual activity against their desire and the consent. That the 'real' men can be vulnerable too.

The acceptance of the above-mentioned beliefs is indispensable for eliminating the social and legal prejudice that 'men are more robust than women'. That men should be granted equal protection against sexual offences as women.

THE RECENT BHARATIYA NAYAYA SANHITA IGNORED 246TH REPORT ON THE BHARATIYA NYAYA SANHITA, 2023

The 246th Report on the Bharatiya Nyaya Sanhita, 2023 by the Parliamentary Standing Committee⁴⁵ made for the review of the Bharatiya Nyaya Sanhita, 2023 made numerous recommendations seeking gender-neutrality in laws, which Bharatiya Nyaya Sanhita failed to recognize.

The report recommended the inclusion of the gender-neutral provisions under Section 75 (Stalking) and 76 (Voyeurism) of the BNS. The committee recommended the retainment of

⁴⁵ Department-Related Parliamentary Standing Committee on Home Affairs, Two Hundred Forty Sixth Report on the Bharatiya Nyaya Sanhita, 2023 (Nov. 10, 2023), *Rajya Sabha Secretariat*, available at https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/246_2023_11_16.pdf

Section 377 of the IPC in the BNS as Section 377 of the IPC, though partially struck down in the case of *Navtej Singh Johar v. Union of India*⁴⁶, however, it was applicable for penalizing the perpetrator for non-consensual carnal intercourse with an adult male.

The committee also recommended the reintroduction of Section 477 of the IPC, which was struck down in the case of *Joseph Shine v. Union of India*⁴⁷ for violating Articles 14⁴⁸, 15⁴⁹, and 21⁵⁰ of the Indian Constitution. The committee observed that an equivalent section must be introduced, making it gender-neutral for safeguarding the institution of marriage.⁵¹

COMPARATIVE ANALYSIS OF RAPE PROVISIONS IN OTHER COUNTRIES

With the passage of time and growth of the society our understanding around the legislative framework for criminal acts like rape has grown too. Historically rape laws were legislated in a gender specific manner and influenced by cultural and social norms, which excluded a significant portion of victims. However, the global trend is turning toward gender-neutral rape laws and the aspect which prioritize consent. This analysis dives into legislative developments in Europe⁵², the United States⁵³, Canada⁵⁴, Australia, and Asia⁵⁵ offering insight on comparative legal responses to rape.

Europe

Europe is leading the shift towards gender-neutral provision. In Europe, the legal identification of male rape victims and female perpetrators differs by country, as traditional definitions frequently reflect gendered viewpoints that perceive females as victims and males as criminals. However, current legal reforms in numerous European countries have pushed toward more.

⁴⁶ Supra 20.

⁴⁷ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

⁴⁸ India Const. art. 14.

⁴⁹ India Const. art. 15.

⁵⁰ India Const. art. 21.

⁵¹ Supra 45.

⁵² Belgium — Rape, European Institute for Gender Equality, <https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/belgium-rape>.

⁵³ “UCR Program Changes Definition of Rape,” FBI (Mar. 19, 2012), <https://le.fbi.gov/cjis-division/cjis-link/ucr-program-changes-definition-of-rape>.

⁵⁴ Criminal Code (R.S.C., 1985, c. C-46), § 271 (Can.).

⁵⁵ *Equality Now & Dignity Alliance International, Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021), <https://www.equalitynow.org/resource/sexual-violence-in-south-asia-legal-and-other-barriers-to-justice-for-survivors/>.

gender-neutral legislation that acknowledge that both men and women can be victims or perpetrators of rape.

Sweden: Swedish law acknowledges that both men and women can be victims of rape. Rape is legally defined as gender-neutral, which means that it can be committed by anybody, regardless of gender, and against anyone, regardless of gender.⁵⁶

Germany: The German legal definition of rape has been revised to be more inclusive and applicable to any individual, recognizing both male victims and female perpetrators.

England and Wales: The legal definition of rape is non-consensual penetration of the vagina, anus, or mouth with a penis.⁵⁷ According to this rigorous definition, only males can be perpetrators. Other types of sexual assault, on the other hand, are addressed in separate gender-neutral provisions of the law.

France: Their definition of rape⁵⁸ tends to focus on acts of force or coercion, with a conventional perception of females as victims that does not clearly address the issue of male victims or female perpetrators.

Belgium and Luxembourg have adopted gender-neutral language⁵⁹ in their legal frameworks, with rape defined as the absence of permission rather than the relationship or gender of the parties involved.

United States: Federal Standardization and State Variability

Federal Position: The legal definition of rape has been broadened and revised to be more inclusive and gender neutral. The FBI's Uniform Crime Report (UCR)⁶⁰ Program defines rape as “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by another person's sex organ, without the victim's consent.”⁶¹ This definition does not need the victim to have resisted the attacker, and it acknowledges that rape

⁵⁶ Sweden's Consent Law: A New Standard for Sexual Offences, Swedish Gender Equality Agency (2024), <https://swedishgenderequalityagency.se/gender-equality-in-sweden/sweden-s-consent-law>.

⁵⁷ Sexual Offences Act 2003, c. 42, § 1 (U.K.) (defining rape as nonconsensual penile penetration of vagina, anus, or mouth).

⁵⁸ French Criminal Code, art. 222-23 (defining rape) (France).

⁵⁹ Belgian Penal Code, art. 138 (defining rape) (Belg.).

⁶⁰ Supra 53.

⁶¹ FBI, *UCR Program Changes Definition of Rape* (n.d.), <https://ucr.fbi.gov>.

can occur to anybody, regardless of gender, and can be committed by anyone, regardless of gender. State Position's: Rape laws vary significantly from state to state. The majority of states have enacted definitions and statutes that reflect a broader concept of sexual violence, similar to the federal definition. State laws often define rape as a variety of actions, including non-consensual acts involving objects or other body parts other than the penis, as well as instances in which the victim is incapacitated or unable to comply owing to mental incapacitation or intoxication.

Canada: The definition of sexual assault is gender-neutral, meaning that both men and women can be victims or perpetrators.⁶² In 1983, the term "rape" was substituted by "sexual assault" in the Criminal Code, resulting in gender-neutral language and application. This modification allows the law to embrace several non-consensual sexual activities outside the classic definition of rape, offering expanded safeguards.

Levels of Sexual Assault⁶³:

- Level 1: Sexual contact without consent, which is the least serious.
- Level 2 offenses include employing a weapon for sexual contact, making threats to others, or causing physical injury.
- Level 3 (Aggravated Sexual Assault) is the most extreme form, including life-threatening acts.

Australia: A Patchwork of State Laws.

Australia's approach to rape legislation differs by state, although recent amendments have resulted in a nationwide shift toward more inclusive definitions that acknowledge the diversity of victims and offenders. Australia's approach to rape legislation differs by state, although recent amendments have resulted in a nationwide shift toward more inclusive definitions that acknowledge the diversity of victims and offenders.⁶⁴ The various variations which exists

⁶² Supra 54.

⁶³ *Victim Rights: Criminal Justice Series — Sexual Assault*, Justice Canada, https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr14_01/p10.html.

⁶⁴ Australia, Parliament, Senate, *Committee on Legal and Constitutional Affairs, Chapter 2: Australia's Sexual Consent Laws*, in *Report on Sexual Consent Laws* (2022), available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualconsentlaws/Report/Chapter_2_-_Australias_sexual_consent_laws.

across state's like Victoria, Queensland, and Tasmania: These states employ the term "rape" expressly in their legislation, which emphasize on the lack of permission and include a variety of coercive situations as parts of the offense.

The analysis of rape laws across various jurisdiction highlights a major trend towards recognizing consent as the central ingredient as evidenced by the redefinition of rape law and this in turn has helped the victim. The shift toward gender-neutral terminology in the rape legislation helps to erase the traditional notion of rape which profiles victim only as women and perpetrators as men. It also gives legal safeguards to all individuals, including previously overlooked male victims. With a more inclusive definition, the reporting of crime will take place with less hesitation. It will offer a more realistic picture of the prevalence of sexual violence across all genders. The evolution of rape legislation throughout jurisdictions reflects a greater societal change toward perceiving sexual violence as a breach of personal autonomy and integrity of an individual, irrespective of gender.

Rape Laws in South Asian Countries

China: The Chinese Criminal Law defines rape as a heinous offence against the body of women which affects its mind and body.⁶⁵ The Rape laws are listed in Chapter 4 under the sub-provision of Part IV which is "Infringement Upon Personal Rights and Democratic Rights is defined as crime. It has also adopted a traditional view i.e the offence of rape can be committed only against the women by violence, coercion or any other mean.⁶⁶ However, the Chinese Legislation, in November 2015, made amendments in the criminal law and expanded the object to include male victims of sexual assault. The offence of rape has not yet been modified, to include the male victim of rape.

In Bangladesh, rape laws have traditionally only provided protection to female victims. However, new legal challenges and advocacy activities are pushing for amendments that would expand protection to male and transgender victims. Section 375 of the Penal Code, which defines and addresses the crime of rape, is currently being investigated as part of these reform efforts. The Bangladesh High Court questioned the administration in April 2022, asking, "What

⁶⁵ Criminal Law of the People's Republic of China, art. 236 (defining rape as non-consensual penile penetration of a woman only) (China).

⁶⁶ *Criminal Law of the People's Republic of China*, art. 236 (2020), NPC, https://en.npc.gov.cn/cdurl.cn/2020-12/26/c_921604_12.htm.

is the problem in including men within the legal provision concerning rape?”.⁶⁷ This trend reflects a broad regional push in Asia towards gender-neutral rape legislation, emphasizing the importance of inclusive legal frameworks that address the vulnerability of all individuals, regardless of gender.⁶⁸

Pakistan: Pakistan's legal system, shaped by its colonial heritage, inherited rape laws rooted in Victorian-era principles.⁶⁹ For decades, Section 375 of the Pakistan Penal Code (PPC) governed rape, defining it narrowly as non-consensual intercourse with a woman. This definition, however, drew widespread criticism for its gender bias, as it exclusively recognised female victims while ignoring the realities faced by male victims and survivors of same-sex assault. Recognising these shortcomings, legal reforms began to emerge, reflecting a growing understanding that sexual violence affects people beyond traditional gender lines and that the law must evolve to offer justice for all survivors.⁷⁰ In 2021, with the implementation of Anti - Rape (Investigation and Trial) Act, legal protection to rape survivor was accorded by introduction of various procedural improvements and reducing the period of trial, but the act failed to accommodate the male victim of rape.⁷¹

In Singapore The Statutes Of The Republic Of Singapore Penal Code 1871⁷², Section 375 defines rape as “ Any man who penetrates the vagina of a woman with his penis and then further categorization ” and then further categorization has been made. This shows that even the most developed nation of Asia, do not have gender neutral provision when it comes to the case of male victim of offence of rape.⁷³

SUGGESTIONS FOR THE GENDER-NEUTRAL LAW

The absence of any stringent legislation protecting men from sexual offences exposes them to vulnerability from such acts. However, it is the need of the hour to eradicate such gender-

⁶⁷ *The Code of Shame: Stigmatisation of Male Rape Victims in Bangladesh*, Oxford Human Rights Hub, <http://ohrh.law.ox.ac.uk/the-code-of-shame-stigmatisation-of-male-rape-victims-in-bangladesh/>.

⁶⁸ Ibid.

⁶⁹ Supra 55.

⁷⁰ Milhan Sarfraz, *The Anti-Rape (Investigation and Trial) Act, 2021: Inadequacies and Implementation Challenges*, 3 Fed. L.J. 87 (2024).

⁷¹ *Critical Analysis of Rape Laws in Pakistan: Still Long Road to Seek Reform*, <https://journal.rais.education/index.php/raiss/article/view/170>.

⁷² Penal Code 1871 (Singapore), § 375 (“Any man who penetrates the vagina of a woman with his penis ... without her consent ... shall be guilty of an offence”) (Sing.).

⁷³ *Rape Laws Explained: Penal Code, Consent and Sentencing*, DasLaw (Singapore), <https://www.daslaw.com.sg/rape-laws-explained-penal-code-consent-and-sentencing/>.

specific laws and introduce more inclusive laws providing protection to every human being, may they be a man, a woman, a transgender or any other gender. The researchers recommend the inclusion of the following provisions:

1. The society, the courts, the law, and the legislators must acknowledge that there can be crimes against men where both women and men can be the perpetrator, and efforts must be taken to safeguard pursuant to Article 15 (prohibiting any kind of discrimination) and Article 21 (safeguarding an individual's life and personal liberty) of the Indian Constitution.
2. The legislature must take a progressive attempt to amend the recently implemented Bharatiya Nyaya Sanhita to neutralize the offences like rape, sexual harassment, stalking, voyeurism, dowry death, cruelty to wife or other offences against women. These offences must be inclusive in providing protection to a man, a woman, a transgender person, a lesbian, or any other gender. While amending Section 63 of the BNS, the legislators must add 'a person' instead of 'a man'.
3. There must be awareness programmes providing information and intimation to the society for the acknowledgement and acceptance that gender doesn't specify the victim and perpetrator. The government must take numerous measures to comfort men to come forward with their horrendous experiences and take legal actions to seek justice for themselves.
4. The Ministry for Safeguarding and Development of Men should be established for the protection of the interests and rights of men.
5. As there is a helpline number for women survivors of sexual abuse by the National Commission for Women, there must be a helpline number specifically addressing the men's suffering from sexual abuse.

The comparative analysis of rape laws across several Asian countries, including China, Pakistan, Bangladesh, and Singapore, reveals a significant lack of gender-neutral provisions. In most of these countries, the legal framework on rape continues to be narrowly focused on female victims, leaving male and transgender victims without adequate legal recognition or protection. This gap stands in stark contrast to the more progressive legal frameworks in several

European countries, where gender-neutral rape laws ensure that victims, regardless of their gender, have access to justice and protection. This disparity highlights an urgent need for reform in Asian countries to ensure equal protection for all survivors of sexual violence.

India, as a country that positions itself as a leader in South Asia and an advocate for human rights, has a unique opportunity to spearhead this change. With the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the colonial-era Indian Penal Code, India finds itself at a crucial juncture. This new legal framework offers a fresh chance to correct historical injustices and align its laws with contemporary global standards. However, despite the progressive intent of the BNS, gender neutrality in rape provisions remains absent. This omission sends a message that only women can be victims of sexual violence, which not only ignores the realities faced by male and transgender survivors but also reinforces harmful gender stereotypes.

Implementing gender-neutral rape laws is not merely about legal formalities—it is about acknowledging the lived experiences of all survivors of sexual violence. Every individual, irrespective of gender, deserves the right to dignity and protection under the law. Denying certain groups legal recognition perpetuates silence, shame, and stigma, leaving many survivors without recourse to justice. Male victims and transgender individuals are often overlooked in traditional legal frameworks, leading to underreporting and limited support. This exclusion creates a culture of denial around the reality that rape is not restricted by gender boundaries.

By incorporating gender-neutral rape provisions, India can set a powerful example for other Asian nations to follow. A progressive and inclusive legal system in India would signal a regional shift toward greater equality and comprehensive protection for all genders. As other South Asian countries often look to India for legal and policy inspiration, India's leadership in introducing gender-neutral rape laws could catalyze regional change and encourage neighbouring nations to adopt similar reforms.

This shift would not only benefit survivors but also help reshape societal attitudes towards sexual violence. It would emphasize that rape is not about the gender of the victim but about the violation of human dignity. By ensuring equal legal protection for all, India can promote a safer, more just society where every survivor is heard and supported, regardless of gender.

Thus, it is imperative that India takes the lead in addressing this gap within the BNS and introduces gender-neutral rape laws. If India acts decisively, it can pave the way for other nations to follow, fostering a more inclusive and just legal framework across South Asia. This change is not only necessary but overdue. It is time for the law to reflect the evolving realities of society and extend equal protection to every individual who suffers from the trauma of sexual violence.

CONCLUSION

The crime doesn't know any gender, so why do we?

As we have witnessed increasing cases of sexual offences due to the absence of any stringent law, it is our responsibility to minimise such cases. This will only happen when the government, judiciary recognise the requirement of criminalising rape against men. Therefore, through this paper, the author seeks support from the government and judiciary to provide justice to men who have been subjected to sexual offence, this can only be done through implementing gender-neutral laws respecting and recognising that crime knows no gender, both men and women are victims of each other and of this society.