BEYOND THE BINARY: THE CASE FOR GENDER-NEUTRAL RAPE PROVISIONS IN INDIA

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ABSTRACT

Section 63 of the Bhartiya Nyaya Sanhita defines rape as an act that 'a man is said to commit', and the acts enumerated in the clauses within all define acts committed against women. In Naz Foundation v. Government of NCT of Delhi, the Hon'ble High Court of Delhi made several elaborate references to instances of sexual assault endured by not just members of the LGBTQ+ community, but also by men. The Hon'ble Court therein laid out the basis for how rape laws should be amended to make them gender-neutral; changing gendered pronouns to 'any person' and defining acts of sexual violence that are not merely endured by women but by any person. The Verma Committee also suggested gender neutrality; however, its proposal made the victim's gender neutral but retained a gendered conception of the perpetrator.

Regardless, to date, the legislature has not acted on these recommendations, and the debate has become unnecessarily polarized, focused more on political motives than on human rights. By way of this research, the author will attempt to uncover why provisions surrounding sexual violence are gendered in India and whether the changes suggested in the Naz Foundation case should be implemented. Furthermore, this research will examine jurisdictions with gender-neutral rape laws, assess the impact of those laws, and identify lessons the Indian legislature might draw. Lastly, the study will explore sociological factors and propose measures to increase awareness so that victims of sexual assault, regardless of gender, feel safe reporting incidents.

Introduction

Section 63 of the Bhartiya Nyaya Sanhita defines rape as "an act that a man is said to commit," and the clauses within are framed around acts committed against women.[1] That textual choice does more than record an older social assumption: it structures the criminal-justice response to sexual violence. When an offence's elements presume a male perpetrator and a female victim, charging practices, medico-legal protocols, investigative priorities and even the social intelligibility of a complaint become calibrated to a single gendered narrative. The result is systematic invisibilisation of those whose experiences do not fit the penile-on-vagina template; men, transgender and non-binary persons, and survivors of non-penetrative sexual violence.

Articles 14, 15 and 21 of the Constitution operate on distinct but overlapping normative planes, and each is directly compromised by the gendered drafting of sexual-offence statutes.[2]

Under Article 14, the State may not create arbitrary or irrational classifications[3]; a rape provision that presumes a male perpetrator and a female victim erects a legal classification that lacks a reasonable nexus with the protected interest (protection from sexual violence) because it excludes survivors who are materially identical in their harm.[4]

Under Article 15, the Constitution forbids discrimination on the basis of sex;[5] by channelling the full weight of criminal protection into a statutory form that is intelligible only when the victim is female, the law effects a sex-based differential denial of protection; men, transgender and non-binary survivors are left outside the primary statutory remedy simply because of their sex or gender identity.

Article 21 secures bodily integrity, dignity and sexual autonomy; yet gendered offence definitions and the institutional practices they generate (forensic routines tailored to female anatomy, investigative scripts that assume female victimhood, and charging norms that reframe non-conforming complaints as peripheral offences) directly undermine survivors' dignity and practical access to the protections Article 21 promises.[6]

In short, gendered drafting does not merely describe a social reality; it legalistically produces

[1] Bhartiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).
[2] Constitution of India, arts. 14, 15, 21.
[3] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India).
[4] Law Commission of India, 172nd Report on Review of Rape Laws (2000), at 11–14 (discussing the gender-specific definition of rape).
[5] Air India v. Nergesh Meerza, (1981) 4 SCC 335 (India).
[6] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India); Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

inequality, denies equal protection on grounds of sex, and impairs the constitutional right to bodily integrity and dignified access to justice.[7]

The dissonance between law and reality is therefore practical, not merely semantic. Survivors who are men or queer encounter police skepticism, forensic routines designed for female bodies, and charging decisions that re-label their harms under lesser or unrelated offences, if they are recorded at all.

Legislative hesitance and piecemeal reform have left a legal architecture that claims to protect "every person" under the Constitution but, in practice, circumscribes protection by sexed assumptions.

This paper contends that correcting that dissonance requires a re-drafting of substantive offences into gender-neutral, consent-centred language, coupled with procedural, institutional and social reforms so that the constitutional guarantees of equality and dignity become real for all survivors.

History

The modern architecture of sexual-offence law in India is a direct descendant of its colonial parentage. The Indian Penal Code, 1860, was the product of the first Law Commission's drafting project under Macaulay and later revisions by colonial jurists; it embodied nineteenth-century assumptions about gender, sexuality and social order.[8] From the first draft, the crime that would come to be called "rape" was imagined around a specific sexual dyad: a male actor, penile penetration, and a female body as the paradigmatic site of criminal wrong. That crystallized grammar did not merely describe existing attitudes; it organized the State's criminal response.[9] Over the decades, statutory language shaped the ancillary machinery of investigation and proof: medico-legal forms, the kinds of injuries examiners looked for, police questioning, and prosecutorial charging practices all assumed a paradigmatic male-perpetrator/female-victim case.

The early post-colonial period was marked more by continuity than reform. Criminal law remained textually conservative while social change and constitutional values slowly shifted

[7] Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India) (holding that gender-based classifications must be tested against constitutional morality).
[8] Mytheli Sreenivas. (2004). Conjugality and Capital: Gender, Families, and Property under Colonial Law in India. The Journal of Asian Studies, 63(4), 937–960. http://www.jstor.org/stable/4133196
[9] KOLSKY, E. (2010). The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57. The Journal of Asian Studies, 69(4), 1093–1117. http://www.jstor.org/stable/40929285

public expectations. Two dynamics, however, forced jurisprudential engagement with the limits of this template. First, factual episodes exposed the inadequacy of a narrow, penetration-and-gender-centric model by producing stark dissonance between lived harm and statutory recognition; second, constitutional jurisprudence on equality, dignity and privacy gradually supplied doctrinal tools that could be deployed to critique and reform the old statutory grammar.

No single episode dramatized that dissonance more than the Mathura case. In March 1972, Mathura, an Adivasi girl, was alleged to have been raped in a police station by two constables. The case reached the Supreme Court as Tukaram & Anr. v. State of Maharashtra.[10]

The Court's ultimate treatment of evidence, emphasizing the absence of visible injury, the fact that Mathura had not raised an alarm, and language suggesting she was "habituated to sexual intercourse" — produced an acquittal that provoked nationwide outrage.

The ruling revealed three things simultaneously: (a) how evidentiary expectations premised on visible resistance or injury could render custodial and coerced encounters invisible; (b) how caste, poverty and gender intersected to determine whose testimony was believed; and (c) how insensitive judicial reasoning could naturalize assumptions about sexual behaviour and consent.

The public backlash led to vigorous feminist mobilization and, eventually, legislative change: the Criminal Law Amendment Act of 1983 created new provisions (including presumptions in certain sexual-offence cases, custodial-rape provisions, and protective procedures such as in-camera trials and restrictions on disclosing the victim's identity). The Mathura controversy made plain that statutory gaps and judicial interpretations were not abstract technicalities but had lethal real-world consequences.[11]

Through the 1980s and 1990s, reform impulses were intermittent and often incremental. Law-commission reports, feminist legal scholarship and advocacy groups repeatedly urged a reconceptualization of sexual offences — to centre consent, to criminalize a broader range of non-consensual acts, and to de-gender the statutory frame so that protection would not turn on the sex of the survivor. Some reformist strands produced concrete results: the Protection of Children from Sexual Offences Act is a useful comparative model, treating the child's

[10] (1979) 2 SCC 143.
[11] Suryansh Shukla. (2020). Critical Analysis of Provision Relating to Rape in India. International Journal of Legal Science and Innovation, 2(3), 13-22.

protection as the core concern and largely avoiding sexed assumptions. But core adult rape provisions largely retained the older grammar.[12]

A second jurisprudential shift arrived through constitutional law. Beginning in the late twentieth and early twenty-first centuries, the Supreme Court's expansion of Article 21 to include privacy, dignity and autonomy, and later recognition of the rights of sexual minorities, created doctrinal hooks for challenging gendered criminal law.[13] Decisions that foregrounded sexual autonomy and non-discrimination widened the interpretive frame available to judges confronting statutes whose language appeared to deny protection to similarly situated victims. At the same time, however, courts demonstrated institutional caution: where the offence definition explicitly invoked female anatomy or penile penetration, many courts felt constrained from "reading in" coverage and repeatedly invited legislative action rather than judicial legislation.

The Nirbhaya case and its aftermath exposed both the demand for reform and the limits of piecemeal change. The Justice Verma Committee recommended a consent-centred overhaul and recognized the need to remove some gendered assumptions; Parliament's response in 2013 broadened offences and strengthened procedure and punishment, but it stopped short of fully re-drafting the core rape definition into explicitly gender-neutral language. Parallel constitutional and high-court pronouncements — for instance, moves to recognize privacy, the decriminalization of consensual same-sex relations, and judgments stressing dignity — continued to erode the intellectual basis for a sex-bound conception of sexual harm even as statutory text lagged.

The jurisprudential history, therefore, exhibits three interlocking patterns. First, an enduring colonial text entrenched a narrow, gendered model of sexual harm that in turn shaped investigative and forensic cultures. Second, episodic crises (such as Mathura, Nirbhaya, and others) catalyzed public and legislative attention, producing corrective but often partial reforms. Third, constitutional jurisprudence over the last three decades has provided the normative scaffolding to contest gendered drafting, even if courts have been reluctant to perform the full legislative redesign. The practical upshot is familiar: persons whose experiences fall outside the male-perpetrator/female-victim narrative — men, transgender and non-binary survivors, victims of non-penetrative sexual violence, and those assaulted in

[12] Protection of Children from Sexual Offences Act, No. 32 of 2012, § 3 (India).
[13] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

custodial or institutional settings — continue to face structural obstacles in recognition, investigation and redress. The legal history, therefore, explains not only why gendered drafting persists, but why reform must be both textual and institutional if it is to close the gap between constitutional promise and lived reality.

Current Legal Landscape

In 2023, a new criminal law was drafted – The Bhartiya Nyaya Sanhita, 2023. Many were hopeful that a revamping of the criminal laws in India would incorporate the suggestions outlined in various judgments[14] and committees[15] that would result in a gender-neutral rape law framework; however, such was unfortunately not the case.

Section 63 of the BNS did not make any amendments when it comes to the gender of either the perpetrator of the crime or the victim. There are various instances that suggest that women can be perpetrators of rape against any gender, and men can be victims of rape by any gender; a clear example is the plethora of POCSO cases illustrating the same.

Karnataka High Court refused to quash a POCSO prosecution against a woman accused of repeatedly sexually assaulting a 13-year-old boy, holding that the POCSO Act is gender-neutral and that the gender of the offender is immaterial to the offence of penetrative sexual assault. The Court emphasized the object and purpose of the statute — protection of children — and found that pronouns in particular sections cannot be read as excluding women from liability.[16]

In a separate ruling, the Delhi High Court held that women may be tried for "penetrative sexual assault" under the POCSO Act and that the offence is not restricted to male offenders. The Court rejected the contention that the use of the pronoun "he" in Section 3 necessarily limits liability to men, and reiterated that statutory purpose and child-centred protection require a gender-neutral application.[17]

[14] Naz Foundation v. Govt. of NCT of Delhi, 160 DLT 277 (Del. HC 2009).; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[15] Justice J.S. Verma et al., Report of the Committee on Amendments to Criminal Law (2013), at 112–120.
[16] Karnataka High Court, "POCSO is gender neutral: Karnataka High Court Refuses to Quash FIR Against Woman Booked for Sexually Assaulting Minor Boy," LiveLaw (18 Aug. 2025), available at https://www.livelaw.in/high-court/karnataka-high-court/pocso-act-gender-neutral-woman-booked-for-sexual-assault-of-minor-boy-301169
; "POCSO is gender neutral: Karnataka High Court Affirms Woman Can Be Charged With Penetrative Sexual Assault," LawBeat (19 Aug. 2025), https://lawbeat.in/top-stories/pocso-is-gender-neutral-karnataka-high-court-affirms-woman-can-be-charged-with-penetrative-sexual-assault-1515667
[17] Sundari Gautam v. State of NCT of Delhi (Delhi High Court, 9 Aug. 2024) — reported and discussed in national press: "Women can also be tried for 'penetrative sexual assault' on a child: Delhi High Court," NDTV

Further, a Special POCSO court in Kerala convicted a mother and her partner for repeatedly sexually assaulting the mother's 12-year-old daughter and sentenced both to cumulatively severe terms (reported as 180 years' rigorous imprisonment under multiple counts). The case is a stark illustration of female perpetration (with an adult woman actively complicit) and of the court's willingness to treat such conduct as among the gravest sexual offences under child-protection law.[18]

These decisions show three important points relevant to adult rape law reform: (a) statutory frameworks can and do operate in a gender-neutral fashion where courts give primacy to purpose and protection over literal pronouns; (b) judicial recognition of female perpetrators and male victims in the POCSO context demonstrates that the binary perpetrator/victim template is empirically false and legally contestable; and (c) if child-protection law can be interpreted and applied in this inclusive way, it underlines the anomaly in adult sexual-offence statutes that continue to enshrine gendered assumptions. Together, the cases strengthen the argument that adult rape provisions should be re-drafted in consent-centred, gender-neutral language and that complementary procedural and forensic reforms (training, MLC protocols, data collection) are necessary to ensure recognition and redress for survivors of all genders.

Foreign Jurisdictions with Gender-Neutral Rape Laws

Several jurisdictions demonstrate that sexual-offence statutes can be drafted and implemented in explicitly gender-neutral terms while centring consent and victim protection. Canada provides a paradigmatic example: Canadian sexual-offence law treats sexual assault and its aggravated forms as gender-neutral offences prosecuted on the basis of lack of consent and the degree of harm rather than the sex of the perpetrator or victim. This consent-oriented framing has produced an extensive body of jurisprudence clarifying what "consent" means in context and establishing evidentiary rules (for example, on the relevance of post-event conduct or so-called "consent videos"), thereby showing how neutrality of language must be matched with doctrinal elaboration to function effectively in practice.[19]

(12 Aug. 2024), https://www.ndtv.com/india-news/women-can-also-be-tried-for-penetrative-sexual-assault-on-child-high-court-6322268

[18] Special POCSO Court, Kerala — mother and partner convicted and sentenced to severe terms for repeated sexual assault of 12-year-old (reported Nov. 2025). See "Woman, her partner get 180-year jail term for assault of 12-yr-old child," Times of India (6 Nov. 2025), https://timesofindia.indiatimes.com/india/180-year-jail-forkerala-woman-partner-for-rape-of-12-yr-old-child/articleshow/125098917.cms

[19] Sexual Assault and Other Sexual Offences, Department of Justice Canada (Dec. 14, 2021), https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr14_01/p10.html ; LEAF, The Law of Consent in Sexual Assault (Canada), https://leaf.ca/news/the-law-of-consent-in-sexual-assault/ (last visited Nov. 2025).

Sweden's 2018 reform illustrates a related model of doctrinal re-orientation: the criminal law was reworked to make absence of freely given consent the core element of rape, replacing earlier models that relied principally on proof of violence or overt coercion. The reform is explicitly gender neutral in application and has been associated with changes in prosecutorial practice and reporting patterns; yet early implementation studies emphasise that success depends on judicial guidance, police training and public education to ensure that the statutory shift from violence to voluntariness is neither symbolic nor incoherent in evidentiary practice.[20]

The Netherlands recently moved to a modernised Sexual Offences Act (effective July 2024) that similarly foregrounds mutual consent and expands liability to cover non-contact and technology-facilitated abuses. The Dutch reforms combine gender-neutral drafting with an expanded taxonomy of offences (including provisions addressing hierarchical relationships and online misconduct), offering a useful model of how statutory breadth and contextual specificity can coexist with neutral language — provided, again, that implementation (training, prosecutorial directives, victim services) is treated as part of the legislative package.[21]

Germany's post-2016 reform of Section 177 of the Strafgesetzbuch represents a "no means no" recalibration within a civil-law tradition. The amendment lowered the evidentiary threshold required to establish non-consensual sexual contact and reoriented the offence towards consent rather than mere resistance. Germany's experience highlights two lessons for reformers: first, that legislative clarity on consent can alter investigative instincts that previously sought visible injury or overt resistance; and second, that statutory reform must be accompanied by prosecutorial and judicial guidance to avoid inconsistent application or undue reliance on old tropes of resistance and injury.[22]

South Africa's Sexual Offences Act and its subsequent amendments explicitly reject a male-perpetrator/female-victim paradigm by defining sexual penetration and related offences in gender-neutral language and by criminalizing non-consensual penetration "irrespective of gender." The South African statute pairs neutral drafting with special procedural protections

[20] Sweden's Consent Law, Swedish Gender Equality Agency (Nov. 29, 2024), https://swedishgenderequalityagency.se/gender-equality-in-sweden/sweden-s-consent-law/; Application and Consequences of the Consent Law, Swedish National Council for Crime Prevention (Brå) (Apr. 8, 2025), https://bra.se/english/publications/archive/2025-04-08-application-and-consequences-of-the-consent-law.html

[21] New Sexual Offences Act Now Effective, Government of the Netherlands (July 1, 2024), https://www.government.nl/latest/news/2024/07/01/new-sexual-offences-act-now-effective

[22] Hoernle, The New German Law on Sexual Assault and Sexual Harassment (mpg.de, 2016), https://lgcl.csl.mpg.de/attachments/Hoernle_2016_The_new_German_law_on_sexual_assault_and_sexual_harassment.pdf

for vulnerable complainants (children, persons with disabilities) and a structured offence taxonomy; however, implementation problems such as investigative capacity and social stigma underscore that statutory neutrality is a necessary but not sufficient condition for inclusive protection.[23]

The United Kingdom displays a mixed, instructive model. The Sexual Offences Act 2003 is largely gender-neutral in many of its provisions (for example, assault by penetration and a range of sexual offences), but the statutory label of "rape" remains defined in terms of penile penetration. That technical distinction means that, in practice, some non-penile sexual assaults are prosecuted under different statutory headings with possible sentencing disparities. The UK example cautions reformers that retaining penetration-based labels while otherwise promoting neutrality can create doctrinal and practical anomalies unless the legislative taxonomy and sentencing framework are harmonized.[24]

Taken together, these jurisdictions yield several comparative lessons for India. First, neutral pronouns alone are insufficient: statutes must be explicitly consent-centred and accompanied by doctrinal rules on capacity, intoxication, and power imbalance. Second, a coherent offence taxonomy (whether a single consent-based offence with graded aggravations or a tiered catalogue) matters for perception and sentencing equity; reforms that preserve penetration as a distinct conceptual category risk downgrading non-penile assaults unless offset by equivalent maximum penalties and clear aggravation criteria. Third, implementation measures — police and judiciary training, prosecutorial guidelines, reformed medico-legal protocols, public awareness campaigns and victim services — are decisive in translating statutory change into improved recognition and redress. Finally, comparative evidence also cautions that empirical effects (on reporting, conviction, and victim uptake of services) are contingent, context-specific and often lag legislative change; careful monitoring, data collection and iterative legal fixes therefore form part of any successful reform strategy.

International Treaties on the Subject

International human-rights instruments provide both a principled architecture and concrete obligations that are directly relevant to how domestic law treats sexual violence. At the most general level, treaties and the soft-law that interprets them insist that states do more than refrain

[23] Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa), https://www.justice.gov.za/legislation/acts/2007-032.pdf
[24] Sexual Offences Act 2003, c. 42 (UK), https://www.legislation.gov.uk/ukpga/2003/42/contents

from misconduct: they must prevent, investigate, punish, and redress sexual violence, and they must do so without discrimination. This "due-diligence" strand of international law runs through multiple instruments and is repeatedly elaborated by treaty bodies: States are required not merely to criminalise certain acts, but to ensure effective remedies, accessible services for survivors, and procedural safeguards that preserve dignity and privacy in investigation and trial.[25]

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is centrally important for any argument about gender-neutral reform. CEDAW frames gender-based violence as both a cause and consequence of discrimination, obliging States to adopt legislative, administrative and other measures to eliminate such violence. The Committee's General Recommendation No. 19 (1992) first elaborated this duty of due diligence; its later General Recommendation No. 35 (2017) updated the doctrine in light of contemporary understandings of gender-based violence and clarified that States must remove structural barriers to justice, including discriminatory laws and practices that foreclose access to protection.[26] The CEDAW framework therefore supplies a direct normative prompt to reassess statutes that, by their wording or application, effectively exclude survivors on the basis of sex or gender identity.

Complementary human-rights instruments reinforce these obligations from different angles. The International Covenant on Civil and Political Rights (ICCPR) protects the right to be free from cruel, inhuman or degrading treatment and protects privacy and personal autonomy; treaty bodies have applied these guarantees in contexts of sexual violence to emphasise investigative diligence and survivor dignity.[27] The Convention on the Rights of the Child (CRC) imposes heightened protective duties in relation to children, and has been the doctrinal backbone for instruments like POCSO; its General Comments require States to adopt child-sensitive investigation procedures, data collection and rehabilitative services.[28] In certain contexts, UN

[25] U.N. Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004), U.N. Doc. CCPR/C/21/Rev.1/Add.13; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001).
[26] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (Violence Against Women) (1992), U.N. Doc. A/47/38; Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017), U.N. Doc. CEDAW/C/GC/35.
[27] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (arts. 7, 17).
[28] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (art. 19); Committee on the Rights of the Child, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, CRC/C/GC/13 (18 Apr. 2011).

human-rights bodies and special rapporteurs have further recognised that systematic or extreme sexual violence can engage rules against torture or ill-treatment, thereby triggering even more stringent obligations to investigate and prosecute perpetrators.[29]

Regional instruments and influential soft-law have played an important catalytic role in pushing states toward consent-centred and inclusive drafting. The Council of Europe's Istanbul Convention, for instance, explicitly urges criminalisation of sexual violence with attention to lack of consent and non-discrimination—an approach that has shaped several European "consent-first" reforms.[30] The Yogyakarta Principles and their 2017 YP+10 supplement extend non-discrimination obligations to sexual orientation and gender identity, stressing that States must guarantee access to remedies for LGBTQ+ victims without bias.[31] While neither Yogyakarta nor the Istanbul Convention is binding on India, each serves as a persuasive international standard and as a model of how neutral drafting and explicit protection for vulnerable groups can be operationalised.

Health-sector and procedural guidance from specialised agencies complements legal norms and is especially relevant when statutes are re-drafted. The World Health Organization's medico-legal guidelines and clinical protocols emphasise victim-centred, gender-sensitive investigation and care: they call for forensic practices that do not assume a female body as the only site of sexual harm, confidentiality protections, and training for health-care staff to avoid secondary victimisation.[32] These technical standards are crucial because statutory reform without corresponding changes in forensic practice and service provision will produce only partial gains.

Two practical implications flow from the treaty framework. First, the international corpus privileges function over form: it requires states to secure effective protection for all survivors, irrespective of sex or gender identity. Thus, a domestic statute that uses gendered grammar but

[29] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; and U.N. Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, e.g., A/HRC/29/27 (2015) (discussing the interplay between sexual violence and obligations under anti-torture frameworks).

[30] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), opened for signature May 11, 2011, CETS No. 210, art. 36 (sexual violence and consent); see Explanatory Report, CETS No. 210.

[31] Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007) and Yogyakarta Principles plus 10 (2017), esp. principles on protection from violence and non-discrimination, https://yogyakartaprinciples.org.

[32] World Health Organization, Guidelines for medico-legal care for victims of sexual violence (2003); World Health Organization, Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines (2013).

functionally excludes male or queer survivors is in tension with substantive non-discrimination and due-diligence obligations. Second, treaty mechanisms create accountability pathways: reporting requirements, periodic reviews, and concluding observations (together with the work of special rapporteurs and treaty committees) provide fora in which domestic lacunae are identified and publicised, and where states can be urged to adopt legislative and administrative reforms.[33]

For India's reform debate this international framework yields three actionable lessons. Any move to a gender-neutral, consent-centred statute would be well grounded in existing treaty obligations; it should be accompanied by clear procedural safeguards (privacy, specialised forensic protocols, child-sensitive procedures), by training and service expansion consistent with WHO standards, and by commitments to disaggregated data collection and periodic reporting so that treaty-monitoring mechanisms can assess implementation. In short, international law does not prescribe a single drafting formula, but it demands that domestic law and practice deliver equal protection, dignity and effective remedies to all survivors — a standard that strongly supports the case for gender-neutral re-drafting coupled with institutional reform.

Sociological Landscape

The sociological terrain in which sexual-offence laws operate is fractal: legal text is only one layer, sitting atop family norms, caste and class hierarchies, gendered expectations, institutional practices and material inequalities. Reforming statutory language therefore confronts a web of social forces that shape whether survivors recognise harm, whether they report it, and whether institutions respond with dignity and effectiveness. This section maps the most salient sociological factors that produce the specific pattern of invisibilisation and exclusion you identify — stigma and masculinities; intersectional vulnerabilities; institutional cultures in policing, medicine and prosecution; data and knowledge gaps; and civil-society responses — and explains why each matters for the project of gender-neutral reform.

Stigma, shame and the governance of masculinity. At the most proximate level, norms about honour, shame and masculinity profoundly inhibit disclosure by men and by gender-nonconforming persons. Masculinity in many Indian social milieux is constituted through

[33] On treaty monitoring and reporting mechanisms as accountability vehicles, see U.N. Office of the High Commissioner for Human Rights, Human Rights Treaty Bodies — A User's Guide (2004); see also concluding observations and thematic recommendations issued by treaty committees (e.g., CEDAW, CRC).

invulnerability, sexual potency and control, so that admitting sexual victimhood threatens social personhood and may invite ridicule, ostracism or violence.[34] These cultural repertoires have practical consequences: male survivors delay or avoid reporting, minimise harms when they speak, or frame incidents in non-sexual terms (assault, assault-on-honour) because doing otherwise endangers social standing. For transgender and non-binary survivors the stakes are compounded: disclosure often risks not only stigma but exposure of a marginalised identity, with attendant risks of family rejection, employment loss, and criminalisation in local social practice.[35] In short, social scripts about gender shape the very threshold at which behaviour is identified as sexual violence and as a matter for the criminal law.

Intersectionality and stratified vulnerability. Gender does not operate in isolation. Caste, class, religion, rural/urban location, disability and migrant status intersect with gender to shape both exposure to sexual violence and access to redress.[36] A poor Dalit man assaulted in custody faces different barriers than a middle-class urban cis-man: the former may confront institutional disbelief compounded by caste prejudice, lack of legal resources, and logistical obstacles to pursuing complaints. Women from marginalised castes and minorities often suffer multiple layers of exclusion; similarly, queer persons from less privileged backgrounds may lack community support and face amplified risks in reporting. Any policy reform that is blind to these intersectional effects risks producing formal equality without substantive access to justice for those most vulnerable.

Institutional cultures — policing, medicine and prosecution. The most immediate site of state response is the frontline: police stations, hospital emergency rooms and prosecutor's offices. Here, entrenched routines replicate gendered expectations. Medico-legal procedures — forensic forms, the ordered checklist of "signs" investigators look for, the sequence of genital-focused examinations — were developed around the paradigmatic female body and penile-vaginal penetration as the core index of harm.[37] Where forensic protocols expect visible injury

[34] R.W. Connell, Masculinities (2d ed. 2005); R.W. Connell & James W. Messerschmidt, "Hegemonic Masculinity: Rethinking the Concept," Gender & Society 19(6):829–859 (2005).
[35] National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India) (NALSA recognition of transgender rights); Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India) (recognition of sexual autonomy and decriminalisation of consensual same-sex relations); Human Rights Watch, "We Live in Constant Fear": Violence and Discrimination against LGBT People in India (2016).
[36] Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," Stanford Law Review 43(6):1241–1299 (1991); see also scholarly literature on caste, gender and violence in India (e.g., Anandita Bhaduri, Caste, Gender and Violence, selected articles).
[37] World Health Organization, Guidelines for Medico-Legal Care for Victims of Sexual Violence (2003); World Health Organization, Responding to Intimate Partner Violence and Sexual Violence Against Women: WHO Clinical and Policy Guidelines (2013).

or insist on particular patterns of evidence, non-penetrative assaults or male genital injury may be rendered invisible. Police culture compounds the problem: victim-blaming tropes, disbelief about male victimhood, and a tendency to categorise intimate violence as "private family matter" (when the survivor is female) or as non-sexual (when the survivor is male) produce differential recording practices and lower rates of cognisable offences.[38] Prosecutors and judges, trained in the same institutional ecosystem, may mirror these assumptions in charging decisions and sentencing, perpetuating a cycle in which statutory change without institutional retraining produces limited benefit.

The evidentiary regime and the tyranny of visible injury. Linked to institutional culture is a dominant evidentiary logic that equates proof with visible, gender-specific signs (bruises, hymenal rupture, pregnancy). This logic is historically contingent but powerful: courts and investigators who expect resistance or visible trauma are likely to discount coerced encounters that lack such markers — for example, instances involving incapacitation, psychological coercion, or non-penetrative abuse.[39] Male survivors are doubly disadvantaged because the epistemic markers investigators seek are gendered (female-centred clinical signs), and because social disbelief about male rape can bias the interpretation of ambiguous forensic findings.

Under-reporting, data scarcity and policy blind spots. The sociological dynamics outlined above generate chronic under-reporting. Official statistics therefore under-represent the prevalence of male and queer victimisation, making the problem politically and administratively invisible.[40] Data deficits have cascading effects: without reliable disaggregated data on survivor gender, type of act, context (custodial, institutional, intimate partner, child abuse), policymakers cannot target interventions, nor can researchers assess the impact of reforms. Improving data collection — disaggregation by survivor gender, sexual orientation, and preferred gender identity; by context of assault; and by prosecutorial outcome — is thus a precondition for evidence-based policy.

Family, community and informal justice mechanisms. In many regions, families and local community institutions are the first arbiters of conflict and the primary locus of remedial action. These actors often prioritise social reputations and marital prospects over legal redress, seek

[38] Human Rights Watch, "We Had No Orders to Save You": State Response to Sexual Violence in India (select reports).
[39] Tukaram v. State of Maharashtra, (1979) 2 SCC 143.
[40] National Crime Records Bureau, Crime in India 2022: Statistics (Ministry of Home Affairs, Govt. of India 2023), available at https://ncrb.gov.in/en/crime-india; United Nations Office on Drugs and Crime, Global Study on Sexual Violence 2020 (UNODC 2021), available at https://www.unodc.org/unodc/en/data-and-analysis/

informal settlements, or press survivors to withdraw complaints. For male survivors, family responses can be particularly punishing; expectations of masculine stoicism and the fear of "dishonour" can translate into family-led suppression of complaints or coercive silence.[41] Informal mechanisms thus operate as an extra-legal obstacle to the formal justice system, and reforms that focus only on statute without attending to community-level norms will miss a crucial site of intervention.

Civil society, advocacy and emergent solidarities. Against these constraints, NGOs, survivor groups and specialised services have developed adaptive strategies: hotlines for male and queer survivors, legal aid clinics, sensitisation modules for police, and medico-legal training programs. These organisations do crucial boundary work — translating legal rights into practicable routes to complaint and care, and supplying the social trust that makes reporting possible.[42] Yet such services are patchy, urban-centric and under-resourced; scaling them requires state support and integration into formal response architecture.

Implications for reform design. The sociological landscape forces several conclusions for any gender-neutral drafting exercise. First, change in statutory grammar must be synchronous with institutional reforms — updated medico-legal protocols, sensitisation and accountability mechanisms in police and prosecution, and capacity building in judiciary and forensic services. Second, legal reform must be accompanied by social-communication strategies that destigmatise male and queer victimhood, including public campaigns, school curricula on consent, and community engagement by credible local actors. Third, data reforms — mandatory disaggregated recording, victim-sensitive data-sharing frameworks, and periodic impact evaluations — are indispensable to monitor whether legal change produces substantive inclusion. Fourth, intersectional programming (targeted outreach to marginalised castes, migrants, disabled persons) is necessary to avoid formal equality masking continued exclusion. Finally, procedural innovations — anonymous reporting channels, third-party reporting mechanisms, survivor navigators, and legal aid fast-tracks — can lower the transactional and social costs of coming forward.

The sociological impediments to recognising and redressing sexual violence outside the male-perpetrator/female-victim frame are deep-rooted but not immutable. Laws that name "any

[41] Patricia Uberoi, The Family in India: Beyond the Nuclear versus Joint Debate, in Patricia Uberoi (ed.), Family, Kinship and Marriage in India 1, 12–19 (Oxford Univ. Press 2016).; Shilpa Phadke, Dangerous Liaisons: Women and Men in Mumbai's Public Spaces, 43(21) Economic & Political Weekly 1510 (2008).
[42] Centre for Social Research, Gender and Violence in India: Report on Support Services for Survivors (CSR 2021), available at https://www.csrindia.org

person" as potential victim and perpetrator must be embedded in an ecosystem that changes the scripts survivors rely on: from disbelief to belief, from shame to support, and from invisibility to accountability. Only by aligning statutory language with institutional practices, social education and evidence systems can the constitutional promise of equality and dignity be made real for all survivors.

Suggestions

Substantive reform should begin with a redraft of core offence provisions to remove gendered grammar and to make lack of freely given consent the central mens rea element. Statutory language should refer to "any person" as both potential victim and perpetrator and should treat penetration as an aggravating circumstance within a graded taxonomy rather than as the sole definitional trigger for the gravest offence. Clear statutory guidance is necessary on incapacity, intoxication, deception and power imbalance so that courts and investigators have reliable legal markers for consent-related determinations. Such drafting aligns the statute with constitutional guarantees of equality and dignity and closes an a priori textual gap that presently excludes certain survivors from the primary criminal remedy.[43]

Procedural reform must accompany textual change if statutory neutrality is to produce substantive protection. Medico-legal documentation and forensic checklists require reworking so that examinations and evidence-collection do not assume female anatomy as the default; protocols must explicitly provide for examination of male, transgender and non-binary bodies and for evidence collection in non-penetrative contexts. Frontline officers — police, emergency medical personnel and prosecutors — should be required to complete certified sensitisation training addressing consent, gender diversity, intoxication, trauma-informed interviewing and non-discriminatory recording of complaints. Institutional accountability mechanisms, including measurable performance indicators (e.g., timely FIR registration, prompt medico-legal examination, and documented victim-satisfaction metrics) and independent oversight cells, should be established to monitor compliance and remedy systemic failures. [44]

[43] Bhartiya Nyaya Sanhita, No. 45 of 2023, § 63 (India).; Constitution of India, arts. 14, 15, 21; see K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India) (privacy, dignity); Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India) (sexual autonomy).; Justice J.S. Verma et al., Report of the Committee on Amendments to Criminal Law (2013).; Sweden: amendment adopting consent standard (2018); Germany: StGB § 177 reform (2016); Netherlands Sexual Offences modernization (2024) — for comparative statutory models, see Criminal Code (R.S.C., 1985, c. C-46) (Canada); Sexual Offences Act 2003 (U.K.).

[44] Protection of Children from Sexual Offences Act, No. 32 of 2012 (India).

Service provision and prevention measures must be universal in design and explicitly inclusive in eligibility. Shelters, counselling, legal aid, and medical services should be available to survivors of any gender and must be scaled beyond urban centres. Funding allocations ought to support specialised helplines, online reporting portals, and legal clinics that address barriers faced by men and LGBTQ+ survivors. Prevention strategies should integrate consent education into school curricula and employ sustained public communication campaigns aimed at destigmatising male and queer victimhood; community outreach initiatives using locally trusted actors can reduce social costs associated with disclosure and sustain reporting pathways. Survivor navigators — trained case-workers who accompany complainants through police, medical and judicial processes — can materially lower the transactional burden of seeking redress, particularly for those from marginalised communities.[45]

Monitoring and safeguards are indispensable to ensure that reform does not remain rhetorical. Mandatory disaggregated data collection across police, health and judicial records — by survivor gender, perpetrator gender, type of act, context of occurrence and case outcome — must be instituted and published periodically to enable evidence-based policy and iterative improvement. Creation or empowerment of an independent monitoring body to review implementation, issue annual compliance reports and recommend corrective action will strengthen accountability. Procedural safeguards against malicious prosecution should be calibrated so that false-complaint mechanisms do not become a barrier to legitimate reporting; prima facie thresholds, prosecutorial review and penalties for proven malicious complaints may be adopted while avoiding onerous pre-trial hurdles that deter genuine survivors.[46]

World Health Organization, Guidelines for Medico-Legal Care for Victims of Sexual Violence (2003), https://www.who.int/publications/i/item/924154628X; World Health Organization, Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines (2013), https://www.who.int/publications/i/item/9789241548595; Karnataka High Court — Order refusing quash of FIR against woman in POCSO case (reported coverage): LiveLaw, "POCSO is gender neutral: Karnataka High Court Refuses to Quash FIR Against Woman Booked for Sexual Assault of Minor Boy" (18 Aug. 2025), https://www.livelaw.in/high-court/karnataka-high-court/pocso-act-gender-neutral-woman-booked-for-sexual-assault-of-minor-boy-301169; National Crime Records Bureau, Crime in India 2022: Statistics (Ministry of Home Affairs, Govt. of India 2023), available at https://ncrb.gov.in/en/crime-india.

[45] Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 19–23 (care and support provisions); WHO clinical guidelines (supra note 6). For NGO-run service models, see Centre for Social Research, Report on Support Services for Survivors (CSR 2021), available at https://www.csrindia.org; Centre for Social Research, Survivor Support Models: Field Report (CSR 2020).

[46] National Crime Records Bureau, Crime in India (annual reports) (e.g., Crime in India 2022, Ministry of Home Affairs, Govt. of India 2023), https://ncrb.gov.in/en/crime-india; United Nations Office on Drugs and Crime, Global Study on Homicide / Global Study on Sexual Violence (select report addressing data and reporting patterns), https://www.unodc.org; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017), U.N. Doc. CEDAW/C/GC/35,

A phased legislative and executive strategy optimises feasibility and impact. Initial statutory amendments should remove gender-specific pronouns and introduce a clear consent definition; complementary executive action — revising forensic rules, launching nationwide training, allocating service funding and issuing prosecutorial guidance — should proceed immediately and be subject to legislatively mandated timelines. A second phase should implement data systems, independent monitoring, and any further normative changes (including position on spousal immunity) within a short, fixed review period. Comparative experience indicates that textual reform without simultaneous procedural and institutional measures yields limited practical change; therefore, drafting, rules, training and funding must be treated as parts of a single reform package.[47]

The expected outcomes of an integrated reform package include improved recognition of non-penetrative and non-traditional forms of sexual violence, higher rates of FIR registration by survivors of all genders, more informed and sensitive investigative practice, greater service uptake by marginalised survivors and, ultimately, more equitable adjudicative outcomes. Legislative neutrality, when embedded in an enabling institutional and social ecosystem, realises constitutional obligations of equality, non-discrimination and dignity and reduces the dissonance between statutory form and lived reality.

Conclusion

The evidence compiled in this paper demonstrates that the current statutory architecture governing sexual violence in India is legally antiquated and socially exclusionary. Colonial-era drafting in the Indian Penal Code and the gendered wording retained in Section 63 of the Bhartiya Nyaya Sanhita have institutionalised a narrow paradigm — a male perpetrator and a female victim — that does not reflect the empirical reality of sexual violence. Judicial episodes from Mathura to more recent High Court pronouncements, together with constitutional developments recognising privacy, dignity and sexual autonomy, expose a persistent dissonance: constitutional guarantees of equality, non-discrimination and bodily integrity remain imperfectly translated into criminal-law form and enforcement.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en.

[47] Law Commission of India, 172nd Report: Review of Rape Laws (2000) (select recommendations and commentary); S. Uhnoo, The Wave of Consent-Based Rape Laws in Europe (2024); Tatjana Hörnle, "The New German Law on Sexual Assault and Sexual Harassment," German Law Journal (2017) (discussing § 177 reform); J. Keiler, "Dutch rape law reform and the complexities of consent," Crime, Law and Social Change (2024).

Three core findings follow. First, the textual gendering of core offences produces predictable substantive harms: certain survivors (men, transgender and non-binary persons, and victims of non-penetrative or non-traditional assaults) are rendered less visible to the criminal-justice system, face investigatory and evidentiary disadvantages, and frequently receive lesser or no statutory protection. Second, incremental or piecemeal legislative change that does not address both text and institutional practice risks becoming symbolic; statutory neutrality without concurrent procedural, forensic and training reforms will not eliminate the practical barriers that suppress reporting and impede redress. Third, comparative and international experience confirms that gender-neutral, consent-centred drafting is feasible and defensible — both as a matter of domestic constitutional principle and as a matter of international obligations — but that statutory reform must be designed as a package: clear legal definitions (consent, incapacity, coercion), coherent taxonomy of offences, prosecutorial/judicial guidance, and substantive investment in victim services and data infrastructure.

Accordingly, the appropriate reform strategy is twofold. The immediate statutory priority must be the re-drafting of substantive offences to adopt gender-neutral language (referencing "any person" as both potential victim and perpetrator) and to place lack of freely given consent at the heart of the offence. Penetration should be retained as an aggravating circumstance in a graded taxonomy rather than the exclusive definitional touchstone. Complementary measures — revision of medico-legal documentation, mandatory sensitisation for frontline actors, dedicated multidisciplinary response units, universal access to survivor services, and mandatory disaggregated data collection — are indispensable to translate textual change into lived protection.

Anticipated objections require addressal within the reform design. Concerns about misuse can be met through careful mens rea drafting, prosecutorial review mechanisms and penalties for proven malicious complaints, while ensuring these safeguards do not create prohibitive pre-trial barriers for genuine survivors. The politically sensitive question of marital rape calls for a transparent, time-bound legislative pathway: immediate textual neutrality and consent provisions, interim non-criminal protective measures for spouses, and a legislatively scheduled review toward criminalisation pursued alongside public education and support systems.

The constitutional and human-rights case for reform is compelling. Articles guaranteeing equality, non-discrimination and dignity demand legal structures that recognise and protect all survivors irrespective of gender. International treaty norms and comparative statutory

experience reinforce that outcome: neutral, consent-based law paired with robust institutional support is both a rights-consistent and practically effective route to inclusion.

Implementation must be evidence-driven, phased and accountable. A short legislative window for initial redrafting should be coupled with mandated executive action — forensic rule changes, training rollouts, service funding and data system upgrades — subject to independent monitoring and a legislatively mandated review. Only by synchronising statute, institutions and social measures can the formal promise of constitutional protection be converted into real safety, recognition and redress for every survivor of sexual violence. The task is legal, administrative and social; its success will be measured not by rhetorical reform but by increased reporting, sensitive investigation, equitable adjudication and restored dignity for those who suffer sexual harm.