

# Gender Neutrality in New Criminal Laws in India: A Critical Study with Reference to Sexual Offences

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## **Abstract:**

The concept of gender neutrality is examined in this research article through the lens of India's new criminal code, the Bharatiya Nyaya Sanhita (BNS), 2023, which supersedes the Indian Penal Code (IPC) from the colonial era and deals specifically with sexual offenses. In it, we look at whether the BNS is an improvement in diversity and inclusion and gender equality protections. This study examines the areas where India's approach to sexual offenses is lacking and proposes concrete changes based on existing laws, constitutional mandates, court rulings, and foreign comparisons.

**Keywords:** Gender neutrality, sexual offences, Bharatiya Nyaya Sanhita, criminal law, LGBTQ+, rape laws, legal reform, Indian Constitution.

## **INTRODUCTION:**

Any individual, irrespective of their gender, should be subject to the same legal safeguards and obligations; this is the idea behind gender neutrality in criminal law. Given the changing nature of gender and sexuality in India, this concept is becoming more important, especially in view of recent constitutional changes and important rulings by the Supreme Court. The Bharatiya Nyaya Sanhita, 2023 (BNS), which supersedes the Indian Penal Code of 1860, provided a once-in-a-generation chance to update criminal laws in a way that is more just, inclusive, and respectful of everyone's rights.

Sexual violence is a serious violation of a person's physical autonomy and respect, and it affects both men and women. But India's old judicial systems have mostly thought about these kinds of crimes through a gendered lens, seeing women as the only victims and men as the only criminals. Men, queer people, and non-binary people who have been sexually abused are not taken into account by this binary structure. Even though the law is becoming more accepting of different gender identities and sexual preferences, the BNS still uses gender-specific language to describe serious sexual crimes like rape.

This research aims to rigorously analyze the gendered assumptions inherent in the sexual offense provisions of the BNS, evaluate their alignment with constitutional principles and international norms, and suggest avenues for reform. The objective is to promote a legislative framework that authentically maintains the concept of gender neutrality and guarantees justice for all victims of sexual abuse.

## **Historical Background of Gendered Sexual Offence Laws in India:**

The morality of the Victorian period, which was included into the Indian Penal Code (IPC) in 1860, has traditionally played a significant role in shaping India's legal reaction to sexual offenses. During the time

when the British colonial government was in power, the Indian Penal Code (IPC) was drafted, and it mirrored patriarchal notions that saw women primarily as passive victims who required protection, while portraying men as the only criminals who committed sexual abuse. As a result of the definition of rape under Section 375 of the Indian Penal Code, which was based on penile-vaginal penetration, only women were considered to be victims, while males were considered to be offenders. This definition did not take into account the fact that other people, including males, transgender people, and non-binary people, can also be victims of sexual assault. It also omitted a wide variety of actions that did not include penetration. Over time, these gaps became more visible as more people learned about them and as LGBTQ+ and women's rights groups fought for them. The Criminal Law (Amendment) Act of 1983 was one of the first laws to try to stop rapes that happened in prison, but it only covered a few cases. It wasn't until the horrible gang rape case in Delhi in 2012 that people across the country came together to demand major changes. In 2012, the Justice Verma Committee was created and suggested that sexual offenses should not be based on gender. Many of its suggestions were put into the Criminal Law (Amendment) Act, 2013. These included making rape a more general crime and adding new crimes like stalking and voyeurism. However, the main meaning of rape stayed the same for both men and women. The law kept saying that only women could be victims and only men could be offenders.

As a result, gender bias in India's sexual violence laws persists despite some progress, which is a reflection of entrenched cultural norms and an unwillingness to embrace a more inclusive approach. The shortcomings of the Bharatiya Nyaya Sanhita, 2023, in attaining gender neutrality can be better understood with this historical background.

### **Analysis of the Bharatiya Nyaya Sanhita, 2023:**

In order to reform Indian criminal law and replace the Indian Penal Code, the Bharatiya Nyaya Sanhita (BNS), 2023, was introduced. Although it has a number of updated rules and structural modifications, it fails to attain real gender neutrality since it continues to handle sexual offenses from a gendered perspective.

#### **1. Definition of Rape: (Sec 63)**

The whole structure of Section 375 of the IPC is replicated in Section 63 of the BNS. It maintains the gender binary framework by defining rape as a crime committed by a man against a woman. In addition to promoting the invisibility of non-female survivors in the criminal justice system, this omission of male and transgender victims ignores the entire range of sexual abuse.

#### **2. Other Sexual Offences:**

Certain gender-neutral aspects are retained in provisions pertaining to crimes like stalking, voyeurism, and sexual harassment. But the BNS as a whole doesn't always use inclusive terminology. There is a lack of uniformity between sexual offense legislation, for example, when gender-neutral terminology such as "person" are employed. Ambiguity in legal interpretation and enforcement results from this uneven writing.

Notably, certain crimes, such as "assault or criminal force to woman with intent to outrage her modesty" (Clause 76), perpetuate harmful gender stereotypes since they are intrinsically related to a woman's sexuality. The fact that people of any gender can be victims of such abuse is ignored by these regulations. The BNS intends to modernize outdated laws, but keeping gendered offenses in the code undermines its progressive spirit.

Consequently, the BNS fails to establish a comprehensive and inclusive legal framework for addressing

all forms of sexual violence, despite the fact that certain measures have been taken toward gender neutrality.

### **3. Missed Legislative Opportunity**

The BNS still lacks a gender-neutral definition of rape, despite recommendations of commissions, introduction of private bills in parliament, public conversation, suggestions from legal and human rights organizations, and robust court support for inclusion. This shows that there was a chance to bring domestic criminal law in line with constitutional principles and changing socioeconomic realities that was not taken advantage of. The Supreme Court's progressive jurisprudence has upheld the rights of transgender and non-binary persons to dignity and equality, but the reluctance to adopt a gender-neutral approach to sexual offenses is in stark contrast. The legislature has disregarded the lived experiences of innumerable victims of sexual violence who are not recognized legally because they have maintained a gender-specific definition of rape and have not expanded the scope of victimization beyond cisgender women. This is an example of how the BNS fails to create a judicial system that is inclusive of all gender identities and acknowledges and protects victims of sexual assault.

### **Constitutional and Judicial Mandates for Gender Inclusivity:**

#### **1. Article 14 and 15 of the Constitution:**

The Indian Constitution's dedication to equality and non-discrimination rests mostly on Articles 14 and 15. Article 14 provides to all people "equal protection of the laws" and "equal before the law," therefore ensuring that no one is deprived of justice depending on arbitrary classification. Article 15 especially forbids discrimination "on grounds only of religion, colour, caste, sex or place of birth." Originally concentrated on stopping discrimination against women and underprivileged groups, the Supreme Court has stretched the meaning of the term "sex" to encompass gender identity and sexual orientation.

Supreme Court decisions like *NALSA v. Union of India* (2014) and *Navtej Singh Johar v. Union of India* (2018) have confirmed that constitutional rights have to cover transgender and non-binary people. These interpretations place a constitutional need on the legislature and court to guarantee that laws—especially those pertaining to fundamental rights such bodily autonomy and protection from violence—are inclusive and gender-sensitive. Particularly in relation to sexual offenses, the preservation of gender-specific categories in the BNS seems to fall short of fulfilling the constitutional duties under Articles 14 and 15.

#### **2. Navtej Singh Johar v. Union of India (2018)**

The Supreme Court of India wiped out Section 377 of the Indian Penal Code (IPC) in the case of *Navtej Singh Johar v. Union of India* (2018). This was an important decision because it meant that consenting sexual acts between adults of the same sex were no longer illegal. The Court decided that the rule went against basic rights in Articles 14, 15, 19, and 21 of the Constitution. These rights included the right to privacy, equality, and freedom of speech.

The bench said that constitutional morality must be more important than social morality, and they recognized that the LGBTQ+ group has been discriminated against and left out in the past. The Court ruled that a person's sexual preference is an important part of who they are and that the government cannot get involved in people's private, voluntary decisions. It is important to note that the ruling made it clear that everyone's civil rights are protected, no matter their gender or sexual orientation. It reinforced that the rights to equality, dignity, and privacy are available to all, regardless of sexual orientation or gender identity.

### 3. Justice K.S. Puttaswamy v. Union of India (2017)

In the case of Justice K.S. Puttaswamy v. Union of India, the Supreme Court of India held that Article 21 of the Constitution provides every individual the right to privacy. This important nine-judge ruling made privacy an essential part of the right to life and personal liberty. It includes the right to make your own decisions about your body, your sexual orientation, and your gender identity. People have the right to make choices about their body, their relationships, and who they are.

This decision is very important when it comes to sexual abuse and gender equality. It set precedent for later decisions, such as the Navtej Singh Johar case, by saying that the government should not get in the way of people's right to control their own bodies. In terms of criminal law, this decision supports laws that don't discriminate based on gender when it comes to sexual offenses because it protects everyone's right to physical dignity and freedom from unwanted intrusion.

Despite this progressive interpretation, the Bharatiya Nyaya Sanhita fails to reflect these constitutional values fully. By maintaining gender-specific definitions of sexual crimes, the law overlooks the autonomy and dignity of male, transgender, and non-binary individuals, thereby falling short of the inclusive vision articulated in Puttaswamy.

### Comparative International Legal Frameworks:

Many countries have effectively implemented gender-neutral frameworks for dealing with sexual offenses, according to a comparative study of worldwide legal systems, which provides India with valuable insights. These models show how the values of justice, equality, and non-discrimination may be upheld through inclusive legislative wording and policy changes.

#### 1. United Kingdom:

The Sexual Offences Act of 2003 in the United Kingdom illustrates a gender-neutral stance on sexual offenses. The law characterizes rape as non-consensual penile penetration of the vagina, anus, or mouth; nevertheless, it is crucial to note that the larger classification of sexual assault is entirely gender-neutral. Victims and offenders may belong to any gender. This comprehensive legislative framework recognizes that men, women, and persons of all gender identities may be impacted by sexual assault, offering equal legal remedies and safeguards.

#### 2. Canada:

The phrase "sexual assault" is used in Canada's Criminal Code, purposefully departing from the connotative term "rape." A more comprehensive, consent-focused, and gender-neutral legal approach is reflected in this revision. The legislation requires court processes to be considerate of the interests of LGBTQ+ people and acknowledges that anybody, regardless of gender, can be the victim or perpetrator of sexual abuse. This concept emphasizes an inclusive and victim-centered approach to criminal justice.

#### 3. Australia:

Several Australian states and territories, notably Victoria and New South Wales, have amended their sexual crime legislation to incorporate gender-neutral terminology. The statute delineates offenses according to the act and consent, rather than the gender of the individuals involved. In Victoria, sexual assault legislation specifically acknowledges male and transgender victims. Australia's inclusive legal frameworks are supplemented by training initiatives for law enforcement and the judiciary to guarantee gender sensitivity in their application.

#### 4. South Africa:

The Criminal Law (Sexual Offenses and Related Matters) Amendment Act, 2007, in South Africa, takes

a broad and forward-looking view. It uses gender-neutral language to describe sexual offenses and lists a lot of different acts as offenses, like sexual education and having anal or oral sex without consent. The law makes it clear that male and LGBTQ+ victims have rights and are vulnerable. This makes it one of the most open legal models in the world.

These international examples illustrate that gender-neutral laws do not diminish rights for women but instead expand the scope of justice. By presenting sexual offenses in a gender-neutral context, these nations maintain the ideal of equality and guarantee that all survivors—irrespective of their gender identity—can receive justice and restitution. India's hesitance to implement such frameworks in the BNS, notwithstanding constitutional obligations and advancing jurisprudence, underscores the pressing necessity for legislative change that is inclusive, evidence-driven, and consistent with global best practices.

### Recommendations:

To bring Indian criminal law in line with constitutional mandates and global best practices, the following reforms are recommended:

1. **Adopt Gender-Neutral Definitions:** Replace terms like “man” and “woman” with “person” or “individual” in all provisions related to sexual offences.
2. **Amend Section 63 of BNS:** Redefine rape in a gender-neutral manner to include male, transgender, and non-binary victims.
3. **Sensitization Training:** Introduce mandatory training for police, medical officers, and judiciary to handle cases involving LGBTQ+ victims with sensitivity.
4. **Data Collection and Research:** Conduct comprehensive studies on sexual violence against men and LGBTQ+ individuals to inform policy decisions.
5. **Public Awareness Campaigns:** Launch campaigns to educate society about the reality of sexual violence across all genders.

### Conclusion:

In conclusion, the BNS is a lost chance to attain true inclusion in the legal acknowledgment and restitution of sexual abuse, although being progressive in many ways. The description of sexual offenses still uses gender-specific terminology, which is against international legal norms, changing jurisprudence, and constitutional principles. Gender neutrality must be a fundamental component of India's criminal justice system if it is to live up to its promises of justice and equality.

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