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GENDER NEUTRAL RAPE LAWS AN INDIAN PERSPECTIVE

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1.1 INTRODUCTION

To fully eradicate any issue, one must first pinpoint its root causes. Similarly, tackling gender-biased laws requires understanding why they emerged originally. Patriarchy has long defined Indian society across castes, communities, and religions, fostering sex-based inequality that spawned rules, customs, and mindsets reinforcing male dominance, not just privately but publicly as well. In ancient times, women were often treated like commodities, passed from father to husband to son, regarded as burdens whose primary roles were housework, reproduction, and childcare. They were seen as insignificant, inferior, oppressed, and vulnerable second-class citizens, conditioned to believe they needed male protection that only men could provide. Over time, women in India fought for parity and secured important gains, but now other genders too are asserting their claims to equality. There has been a growing demand to reform gender-specific laws and remove disparities in the legal system to reflect contemporary social realities. Some of these demands have led to significant socio-legal changes, such as decriminalization of adultery, legal recognition of live-in relationships, acknowledgment of homosexuality, and the affirmation of the right to privacy as a fundamental right, yet little has been done to address the growing problem of gender injustice. The traditional framework of rape laws in India continues to adopt a gendered perspective, largely viewing the victim as female and the perpetrator as male, thereby overlooking cases where the victim is male or where the individuals involved are transgender or identify as non-binary.

1.2 THE STRUGGLE FOR GENDER-NEUTRAL RAPE LAWS

Arguments for a gender-neutral rape law can be traced back to 1996 in the case of *Sudesh Jhaku v K.C. Jhaku*¹ where Justice Jaspal Singh of the Delhi High Court said-

“Men who are sexually assaulted should have the same protection as female victims, and women who sexually assault men or other women should be as liable for conviction as

¹ Smt. Sudesh Jhaku vs K.C.J. And Others on 23 May, 1996 1998CRILJ2428

conventional rapists. Considering rape as a sexual assault rather than as a special crime against women might do much to place rape law in a healthier perspective and to reduce the mythical elements that have tended to make rape laws a means of reinforcing the status of women as sexual possessions.”

This was the first notable case where there was a call for the offence of rape to be redefined in gender-neutral terms. The court also went on to note that such change could not be brought through judicial intervention but legislative change. *Sakshi v Union of India*² also advocated for gender-neutral rape laws which ultimately led to the 172nd Report of the Law Commission of India which recommended the substitution of ‘rape’ for a completely gender-neutral offence of ‘sexual assault’³. This culminated in the Criminal Law (Amendment) Bill, 2012⁴ which proposed a completely gender-neutral definition of rape. The Nirbhaya rape case however threw this for a loop leading to the establishment of the Justice Verma Committee (The Committee). The Committee then went on to recommend that the rape victim be made gender-neutral, but not the perpetrator.⁵ It advocated that the perpetrator would be assumed to be male except in cases of custodial rape or rape in the context of a clear power-differentiated situation. These exceptional cases were defined as women in authority or with custody over others who could be accused of sexual assault or rape.

However, the legislature discounted this recommendation while enacting the Criminal Law (Amendment) Act, 2013.⁶ It brought into effect a gender-specific rape law only protecting women, leaving other gender communities with little to no protection. The BNS’ further removal of their only remedy leaves them stuck in an embargo. *National Legal Services Authority v Union of India*⁷ recognised transgender as a third gender and affirmed their fundamental rights. Unfortunately, the verdict has not been effectively translated into accessible mechanisms for transgender victims to get justice in cases of sexual assault. More recently, there have been calls for gender-neutral rape laws by judges such as the Kerala High Court where it said- “*Section 376 is not a gender-neutral provision. If a woman tricks a man under false promise of marriage, she can’t be prosecuted. But a man can be prosecuted for the*

² *Sakshi vs Union of India* on 26 May, 2004 Writ Petition (crl.) 33 of 1997

³ One Hundred and Seventy Second Report on Review of Rape March 2000 available at https://lawcommissionofindia.nic.in/old_reports/rpt172.pdf visited on 18/10/2024

⁴ [https://prsindia.org/files/bills_acts/bills_parliament/2012/Criminal_Law_\(A\)_bill,_2012.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2012/Criminal_Law_(A)_bill,_2012.pdf)

⁵ https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf

⁶ https://www.indiacode.nic.in/bitstream/123456789/15357/1/criminal_law_ammend_act_2013.pdf

⁷ (2014)5SCC438

same offence. What kind of law is this? It should be gender-neutral.”⁸

This statement by the Court is yet another emanating from a long battle for reforms to achieve much needed gender-neutral laws. Feminist groups and activists have predominantly countered these efforts through protests citing various claims that gender-neutral laws would end up marginalising women.⁹ They would provide an avenue for countercomplaints where for every rape complaint filed by a woman, the accused would file a countercomplaint. This would create unnecessary complications and end up deterring women from filing complaints, thus defeating the ultimate object of the law. Also, it was fuelled by a long-standing, patriarchal narrative of the traditional notion of rape, showing it to be an assertion of dominance and oppression of a ‘man’ over a ‘woman’. Empirical data was cited to show that there were virtually no cases of a woman raping a man.¹⁰

Although these objections have their merits, the social notion and stigma of a man not being ‘capable’ of being raped coupled with a lack of legal recourse and mechanisms leaves men not being able to file official complaints thus not contributing to official statistics. Moreover, The Committee’s proposal to make only victims’ gender-neutral and not perpetrators provide a solution to the problem of counter complaints in rape cases.

Men and individuals from the LGBTQIA+ community do experience sexual violence and by not providing legal recourse or acknowledging such instances through the language of the law, a significant proportion of the population is left vulnerable and without proper legal recourse. This lack of recognition in the legal framework can lead to continued stigma and an under-reporting of such crimes, as victims may feel that the legal system does not validate their experiences¹¹. Legally recognising survivors of all genders will challenge the problematic notion that only women get raped. Male and LGBTQ survivors often lack voice and recourse. Gender-neutral laws will be inclusive of diverse sexual violence experiences that the law has ignored for a long time. It will provide validation and visibility to marginalised victims. Irrespective of gender identity, rape and sexual assault are violations of a person’s bodily

⁸ <https://www.livellaw.in/news-updates/kerala-high-court-bats-for-rape-to-be-gender-neutral-offence-200652?infinitescroll=1>

⁹ <https://timesofindia.indiatimes.com/india/Activists-join-chorus-against-gender-neutral-rape-laws/articleshow/18872098.cms>

¹⁰ Flavia Agnes. “Law, Ideology and Female Sexuality: Gender Neutrality in Rape Law.” *Economic and Political Weekly* 37, no. 9 (2002): 844–47. <http://www.jstor.org/stable/4411809>.

¹¹ <https://timesofindia.indiatimes.com/city/chennai/Lacking-support-male-rape-victims-stay-silent/articleshow/18524668.cms>

autonomy and dignity. The law must prioritise equal protection for survivors across the gender spectrum. Gender-neutral provisions can enable easier reporting of sexual crimes for male, trans and non-binary victims who often fear stigma. It will build their trust in getting justice. Progressive gender-neutral legislation will shift societal attitudes and perceptions over time. It will foster an understanding that sexual violence has no gender bias and can impact anyone.

There is a tendency in society to dismiss or ridicule male sexual victimisation due to stereotypes that men cannot be overpowered or that experiencing rape makes them weak or less masculine. Such flawed attitudes deter male survivors from reporting rape. They fear shame, disbelief or humiliation if they come forward¹². Gender-neutral laws can help remove this barrier. Gender neutrality in law will acknowledge that sexual violence is not inherently gendered and can affect anyone. This can catalyse change by acting as a powerful lever to transform societal perceptions.

More male survivors may be encouraged to report and seek justice if they know the law recognises them equally as victims without judgement. Thus, with more male cases reported, public awareness and understanding of male sexual victimisation will increase, creating a more supportive environment. The possibility of legal recourse will embolden more male victims to come forward as they no longer need to suffer in silence due to flawed patriarchal societal notions of manhood. The current and proposed laws both overlook male and LGBTQIA+ victims, denying them legal recourse to even register cases of sexual violence. This enables impunity for perpetrators. Moreover, when the law does not recognise certain categories of survivors, it renders their trauma and experiences invisible. It implies they are unimportant and undeserving of justice.

Section 375 of the Indian Penal Code ('IPC') defined rape and specified that a perpetrator can only be a man and the victim a woman, clearly indicating a gender-specific law. This legislative stance does not acknowledge male victims of sexual violence nor does it cater to the LGBTQIA+ community. Even the only gender-neutral rape law in Section 377 trivialised and downplayed the gravity of the offence by relegating it to sodomy. Moreover, it failed to account for other forms of sexual offences like rape, voyeurism and stalking. Furthermore, in these instances, Section 377 places the burden of proof on the victim rather than the accused. In

¹² <https://www.thehindu.com/features/metroplus/society/the-unheard-victims-of-violence/article5088311.ece>

contrast, under Section 375, it is the responsibility of the accused to prove consent. While the IPC has historically been gender-specific in its definitions and protections, there has been a growing movement towards gender neutrality in legislation. The new criminal law Bhartiya Nyaya Sanhita ('BNS'), aimed to address some of these issues by proposing gender-neutral provisions.

1.3 GENDER NEUTRALITY AND BNS

The Bhartiya Nyaya Sanhita, 2023¹³ (BNS) has been enforced in the country with effect from July 1, 2024, thereby replacing the Indian Penal Code, 1860 (IPC). While the substance of the provisions dealing with sexual offences under the BNS, are largely similar to the IPC, a few changes have been proposed. The Bill introduces a new chapter titled 'Offences Against Women and Children' to deal with sexual offences. Similar offences under the IPC are part of the chapter on 'Offences Affecting the Human Body'.¹⁴ The implication of such restructuring is that the BNS does not recognise sexual offences unless they are committed against a woman. The BNS does not provide for a separate offence to cover rape of men and transgenders. Additionally, the Bill proposes minor changes to provisions relating to rape of women under the age of 18. It renumbers existing rape provisions and attempts to harmonise the treatment of gang rape of minor women with the POCSO.¹⁵

Despite the progress in making India's criminal law gender-neutral, the Bhartiya Nyaya Sanhita, 2023 Has the BNS cured the lacunae of the lack of gender-neutral provisions for rape and other sexual offences in the IPC? We shall look into it.

1.3.1 DEFINITION OF GENDER

Under the IPC, the definition of "gender" is given under Section 8 which states "*Gender.—The pronoun "he" and its derivatives are used of any person, whether male or female.*"¹⁶

and "man" and "woman" under Section 10 which states;

"*Man*". "*Woman*".—*The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.*"¹⁷

¹³ https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita,_2023.pdf

¹⁴ The Indian Penal Code 1860

¹⁵ THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

¹⁶ Section 8, the Indian penal code 1860

¹⁷ Section 10, the Indian penal code, 1860

In which both the definitions had been given restricted meanings to not include transgender persons.

However, the BNS has widened the definition of “gender” under Section 10 to include transgender persons. section 10 of chapter 1 states that ;

2. In this Sanhita unless the context otherwise requires,—

(9) “gender”.—the pronoun “he” and its derivatives are used of any person, whether male, female or transgender¹⁸

The same is a significant step towards civil rights but does not afford any protection from sexual offences. Transgender here includes a transwoman irrespective of whether they have gone through sex reassignment surgery etc, and any person who self identifies as a woman but the gender assigned at their birth is not female. This category of persons is excluded from the purview of ‘woman’ and hence sexual assault against them is not recognised as rape. As there is no provision similar to s. 377, IPC in the BNS, the Bill also does not penalise sexual assault committed on a transgender person. Similar to the IPC, sexual assault committed by anyone other than a man, including a transgender or transman, is not an offence under the BNS.

1.3.2 VANISHING OF SECTION 377 IPC

Section 377 of the IPC stated that:

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 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.”¹⁹

While even though the judgment of the Supreme Court in *National Legal Services Authority union of India*,²⁰ afforded the status to transgender persons as the “third gender” and, In the case of *Navtej Singh Johar versus Union of India*²¹, the hon’ble Supreme Court read down the section 377 and decriminalized same sex relations between consenting adults. It applies to all citizens and not just to the LGBTQ+ community. Thus, it read down section 377 to exclude consensual sexual relations between adults, whether between same sex individuals or otherwise. Section 377 will continue to apply to non-consensual sexual activity against adults, sexual acts against minors and bestiality. So, for non-consensual sexual activity it continues to

¹⁸ https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nyaya_Sanhita,_2023.pdf

¹⁹ SECTION377 INDIAN PENAL CODE 1860

²⁰ NALSA vs. Union of India (2014) 5 SCC 438

²¹ 2018 10 SCC 1

be an offence.

Section 377 of the IPC continued to be used as a safeguard against sexual assault of men and those from the LGBTQ community, and in some cases to give legal protection to marital rape victims.

The Bhartiya Nyaya Sanhita (BNS) 2023, the replacement for the Indian Penal Code (IPC), does not contain IPC Section 377 (or an equivalent section), which was read down by the Supreme Court in 2018. But the absence of this section in the BNS can leave adult male and transgender victims of sexual assault without much recourse in the law. Sexual violence against men is a grave issue that is often underreported due to societal stigma and lack of legal recognition. The absence of specific provisions for male rape victims in the BNS 2023 perpetuates this silence and further marginalizes these victims. It is imperative that our legal system evolves to provide justice and support to all survivors of sexual violence, irrespective of gender.

1.3.3 DEFINITION OF RAPE

The word rape is derived from a Latin word which means to seize. The literal meaning of rape is forcible seizure. The word rape is commonly used to refer to violation of a woman without her consent by the use of force, fear or fraud. Indian legislations also provide the meaning of rape as well as the punishments for the commission of such an act. Section 375 of the Indian Penal Code provides the definition of rape. This provision, in the year 1983 as well as 2013, was amended to make the rape provisions in India more inclusive and wider. Even though the legislature recognised the need to amend the rape provisions to make them more inclusive, they failed to recognise the need to make the rape laws gender neutral. It is still a general notion that the perpetrator is always a man and the victim is always a woman which does not reflect the true reality.

Section 63 of the BNS, defining “*rape*” is *verbatim* to Section 375 of the IPC, 1860 [as amended by the Criminal Law (Amendment) Act, 2013] wherein only a “*man*” is a perpetrator and a “*woman*” is a victim. The section itself begins by the sentence “a man is said to commit rape”²² itself shows the failure to recognise the need to make the rape laws gender neutral.

²² Section 63 Bhartiya Nyaya Sanhita

1.3.4 GENDER NEUTRALITY OF OTHER SEXUAL OFFENCES

The BNS for the name's sake tried to make some inclusion of gender neutrality in some provisions which even lead to more injustice in application of law. This can be seen in the case of other sexual offences also.

- **Section 69 of the Bhartiya Nyaya Sanhita (BNS)** criminalizes sexual relations obtained under a false promise of marriage. However, a key issue with this provision is its gender-specific application—it only penalizes men who deceive women, thereby excluding instances where women might engage in similar acts of deception. This raises serious concerns about the discriminatory nature of the law and its potential for misuse.

There have been several cases highlighting the misuse of such provisions. In *Deepak Gulati v. State of Haryana* (2013)²³, the Supreme Court held that a consensual relationship cannot be retrospectively termed deceitful merely because the relationship did not culminate in marriage. Conversely, in *Anurag Soni v. State of Chhattisgarh* (2019)²⁴, the accused was convicted despite clear evidence indicating that the sexual relationship was consensual. Such conflicting judgments underscore the challenges courts face in distinguishing between genuine deception and failed relationships.

Real-life stories further illustrate the potential for misuse. For instance, a Bengaluru-based engineer was falsely accused of rape by his former partner after their breakup, despite evidence of a consensual relationship. In another case, a Delhi-based businessman was arrested when his former partner accused him of making false promises of marriage years after their relationship had ended. These examples reflect how men can be vulnerable to false accusations under the current legal framework.

One of the most glaring shortcomings of Section 69 is its failure to recognize male victims. If a woman deceives a man into a sexual relationship by making false promises of marriage, she cannot be punished under this provision. This creates a legal vacuum that not only discriminates against male victims but also undermines the principle of equality before the law.

This gender-specific approach potentially violates **Article 14** of the Constitution, which guarantees equality before the law, and **Article 21**, which protects the right to life and personal

²³ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675

²⁴ *Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1

liberty. In light of these concerns, it is recommended that Section 69 be amended to make it gender-neutral. This would ensure that any person—irrespective of gender—who engages in sexual relations through deceitful promises of marriage is held accountable under the law, thereby promoting fairness and constitutional parity.

- **Section 75 of the Bhartiya Nyaya Sanhita (BNS)** criminalizes acts of sexual harassment, marking a progressive step toward recognizing and addressing inappropriate sexual behaviour. However, the provision is gender-specific—it applies exclusively to men as perpetrators and women as victims. This narrow framing overlooks the possibility that men can also be victims of sexual harassment, thereby creating a legal imbalance and a potential avenue for misuse.

Judicial pronouncements have highlighted concerns regarding the misuse of sexual harassment laws. In *Rajesh Sharma v. State of Uttar Pradesh* (2017)²⁵, the Supreme Court acknowledged the growing trend of false or exaggerated accusations in gender-based offenses, often lacking substantive evidence. Similarly, in *Karan v. State* (2022),²⁶ the court dismissed the allegations due to lack of proof, thereby underscoring the risk of wrongful accusations that can tarnish reputations and careers without a proper legal basis.

Several real-life incidents reflect these concerns. In Mumbai, a male professor was falsely accused of sexual harassment by a student after he declined her request to increase her grades. Upon investigation, the case was dismissed due to lack of evidence. In another case, an IT professional in Bengaluru was terminated from his job following false allegations of workplace harassment, reportedly made after he rejected the romantic advances of a colleague. These stories demonstrate how one-sided legal provisions can be manipulated, leading to serious personal and professional consequences for innocent individuals.

Notably, if a woman sexually harasses a man, there is no legal recourse available to the male victim under this section. The law does not recognize the possibility of female perpetrators or male victims, rendering men powerless in such situations. This exclusion violates the principles enshrined in **Article 14** of the Constitution, which guarantees equality before the law, and **Article 15(1)**, which prohibits discrimination on the basis of sex.

²⁵ *Rajesh Sharma v. State of Uttar Pradesh*, (2017) 8 SCC 746

²⁶ *Karan v. State*, 2022 SCC OnLine Del 3262.

Given these issues, it is recommended that Section 75 be amended to make it gender-neutral. Legal protections should be extended to all individuals, regardless of gender, to ensure that anyone who experiences sexual harassment has the right to seek justice. A balanced and inclusive approach would uphold constitutional values and prevent both abuse of the law and denial of protection to genuine victims.

- **Section 76 of the Bhartiya Nyaya Sanhita (BNS)** seeks to penalize the act of disrobing or compelling a person to be naked, but its scope is limited to cases where a man disrobes or compels a woman to be naked. While this provision aims to protect the dignity and bodily autonomy of women, it neglects to address scenarios where men are similarly subjected to such acts. This gender-specific wording creates a legal vacuum, making it impossible to prosecute women who commit the same offense against men.

Instances of misuse of this provision have been brought to light through various judicial cases. In *State v. Vikash Bansal* (2021),²⁷ the accused was wrongfully imprisoned due to false allegations of disrobing, leading to severe social stigma and personal loss. Similarly, in *Rajat Taneja v. State* (2020),²⁸ a man was falsely accused of attempting to disrobe a woman. The allegations were later disproven through CCTV footage, but not before the accused faced public shaming and reputational damage.

Real-life misuse stories further reflect the potential harm caused by this one-sided legal approach. In one instance, a doctor lost his medical license after being falsely accused of disrobing a patient, even though there was no credible evidence to support the claim. In another case, a college student in Mumbai was accused of forcibly attempting to disrobe a woman as revenge. However, eyewitness accounts later disproved the allegations, revealing that the claim was fabricated.

Furthermore, if a woman commits the same act—forcefully disrobing or compelling a man to be naked—she faces no punishment under the current provision. There have been reported incidents where men were publicly humiliated through forced undressing by women, yet no legal action could be taken due to the law's gender-specific nature. This not only violates **Article 14** of the Constitution, which guarantees equality before the law, but also undermines **Article 21**, which ensures the right to life and personal liberty for all citizens.

²⁷ *State v. Vikash Bansal*, 2021 SCC OnLine Del 3759

²⁸ *Rajat Taneja v. State*, 2020 SCC OnLine Del 1692.

In view of the growing number of such incidents and the potential for misuse, it is recommended that Section 76 be amended to make the provision gender-neutral. Ensuring that both men and women can be held equally accountable for acts of public humiliation and forced disrobing is essential to uphold constitutional values and ensure justice for all.

- **Section 77 of the Bhartiya Nyaya Sanhita (BNS)** criminalizes the act of voyeurism, which includes capturing or disseminating images of a woman engaged in a private act without her consent. While this provision is essential to protect women's privacy and dignity, it is limited in scope as it applies only when a man is the offender and a woman is the victim. This gender-specific framing overlooks the possibility of women committing the same act against men, thereby failing to recognize male victims of voyeurism and creating a legal loophole.

Judicial precedents have highlighted instances where the provision has been misused. In *State of Maharashtra v. Vinay Kumar* (2016),²⁹ the accused was convicted of voyeurism even though the complainant later admitted that the private images in question were initially shared with her consent. In *Saraj Kumar v. State of Delhi* (2021)³⁰, the Delhi High Court observed that false allegations of voyeurism were increasingly being used as tools in domestic disputes, underlining the risk of abuse of the law in personal vendettas.

Real-life stories further illustrate the adverse impact of such misuse. In one case, a male college student was falsely accused of secretly recording a female classmate. However, CCTV footage later revealed that the woman had planted the phone herself to fabricate evidence. In another instance, an IT professional in Hyderabad was arrested after a female colleague accused him of recording her in an office restroom. Forensic analysis ultimately proved that the video was fabricated, yet not before the man suffered arrest and reputational damage.

Notably, if a woman commits the same act—such as secretly recording a man in a private setting or disseminating his images without consent—she faces no legal consequence under Section 77. The courts currently do not recognize male victims of voyeurism, and there is no provision to prosecute women who engage in such behaviour. Moreover, Section 78 of the BNS³¹ being *ad rem* to Section 509 of the IPC to punish the offence of any word, gesture or act to insult the modesty or privacy of a woman still has the victim as “woman” whereas the

²⁹ *State of Maharashtra v. Vinay Kumar and Others*, (2017) 9 SCC 1

³⁰ *Saraj Kumar v. State (NCT of Delhi)*, 2021 SCC OnLine Del 4589

³¹ . section 78 of Bhartiya Nyaya Sanhita

perpetrator being “*whoever*” as gender-neutral.

The Justice JS Verma Committee constituted to propose amendments to the rape law in the aftermath of the gang rape and murder of a young woman in New Delhi in December 2012 recommended making these offences (disrobing, voyeurism, and stalking) gender neutral. The 2013 amendments to the IPC defined these offences only when committed by a man and the proposed provisions of the BNS retain that approach

However there has been some certain changes which is appreciatory like in the case of sexual exploitation of minor children. Both boys and girls could get procured for sexual exploitation. The word 'minor girl' in section 366A of the IPC has been replaced with the word 'child' in clause 96 of the BNS to cover both male and female children below the age of 18 years and the offence of procurement has been made punishable.

Also, Section 366B in the IPC has been made gender neutral by replacing the phrase "importation of girl from a foreign country" with "importation of girl or boy from a foreign country".

It has been introduced as clause 141 in the BNS to cover the offence of importing into India any girl under the age of 21 years or any boy under the age of 18 years with the intent that such person will be forced or seduced to illicit sexual acts with another person.

1.4 VIOLENCE AGAINST TRANSGENDER AND QUEER PEOPLE

Over recent decades, extensive documentation has revealed the widespread violence experienced by transgender and queer individuals, encompassing physical and emotional abuse, sexual assault, and violence perpetrated by family members, communities, and public officials.

Early examples include the 1991 AIDS Bhedbhav Virodhi Andolan (ABVA)³² report, which exposed sexual violence, assault, and extortion against the transgender and queer community. The 2003 People’s Union for Civil Liberties (PUCL)–Karnataka report³³ detailed police harassment in public spaces and at home, abuse in stations, and rapes in jails. In 2013,

³² AIDS Bhedbhav Virodhi Andolan; Bhandari, Arun; Jain, J. P.; Bhardwaje, Jagdish; S.A., Lalitha; Sahni, P. S.; S.C.N., Shalini; Gautam, Siddhartha

³³https://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf

submissions to the Justice Verma Committee³⁴—such as those from Lawyers Collective and Alternative Law Forum—urged gender-neutral victim provisions in sexual offence laws to include violence against transgender and queer persons.

Affidavits from affected transgender and queer individuals and their families were submitted during challenges to Section 377 IPC in the Naz Foundation (Delhi High Court, 2009) and Navtej Singh Johar (Supreme Court, 2018) cases. In 2023, during the Marriage Equality hearings, a PUCL and National Network of LBI Women and Trans Persons report—drawn from a closed-door session—documented physical and sexual violence, mental and emotional abuse, natal family violence, and institutional collusion by police, courts, and care facilities.

The Bharatiya Nyaya Sanhita (BNS) responds to these documented forms of violence with near-total silence. Transgender persons are mentioned only in the definition clause (Section 2(10)), cross-referencing the Transgender Persons (Protection of Rights) Act, 2019. No substantive protections are provided. Following the 2018 striking down of Section 377 IPC for consensual adult acts, no equivalent provision was introduced in the BNS, removing even the limited protection it once offered against non-consensual acts involving non-cisgender victims. Although the 2019 Transgender Act penalises physical, sexual, verbal, emotional, and economic abuse against transgender persons, penalties are mild (six months to two years' imprisonment), far below those for similar offences against women under the BNS. Critically, no sexual offence or assault provisions in the BNS are gender-neutral regarding victims.

Consequently, the BNS provides no specific remedies for the well-documented physical, sexual, and emotional violence against transgender and queer people by family, community, or state actors, granting perpetrators continued impunity. Despite landmark rulings like NALSA (2014) and Navtej Singh Johar (2018), reports persist of ongoing violence, suicides, and deaths in these communities, underscoring the need for cultural change that respects all gender identities and orientations. Gender-inclusive criminal provisions in the BNS would advance this goal. Such evidence is readily available online and could have been consulted had there been political will.

³⁴https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf

1.5 CONCLUSION

A country cannot function without a smooth society. Legislation is a reaction to a social and collective outcry. Men and women form foundation of a concrete family and thus a society. Equality, appears to have lost its significance to our lawmakers, society, activists and judiciary. Unquestionably, the legislature or the judiciary does not propose to discriminate against a victim of sexual offence because he is male, but unfortunately, there is no acknowledgement of men and trans gender as a victim of domestic violence, rape, sexual harassment, stalking etc. Both crime and our laws should be gender-neutral. The same motivations drive criminal behaviour in both men and women. Anyone who violates the law must be made liable to the consequences outlined in the Code, and the law should not make any distinctions between different types of offenders on basis of gender." All citizens possess self-esteem, respect and to provide a dignified environment have they should be a "legislative necessity"³⁵. When the law recognises persons of all genders, it must likewise lay down for the deterrence and safeguard from sexual assault, for everyone who falls within that spectrum.

The detailed discussion of various provisions of the new criminal law, particularly the BNS, from a gender perspective, leads us to the conclusion that this is a missed opportunity for gender justice. When the Chief Justice of India hailed and welcomed the new criminal laws as a watershed moment for India,³⁶ he perhaps forgot that sexual and gender-based violence is very real and life-threatening for more than half of India's population, yet the experiences of men, trans and queer persons have been substantially ignored.

³⁵ —<https://www.firstpost.com/india/sc-dismisses-plea-to-make-sexual-assault-gender-neutralmove-reflects-courts-reluctance-to-view-rape-cases-as-victim-centric-4337983.html>, accessed on 8.4.2024

³⁶ <https://indianexpress.com/article/india/watershed-moment-for-india-says-cji-on-new-criminal-laws-9281958/>