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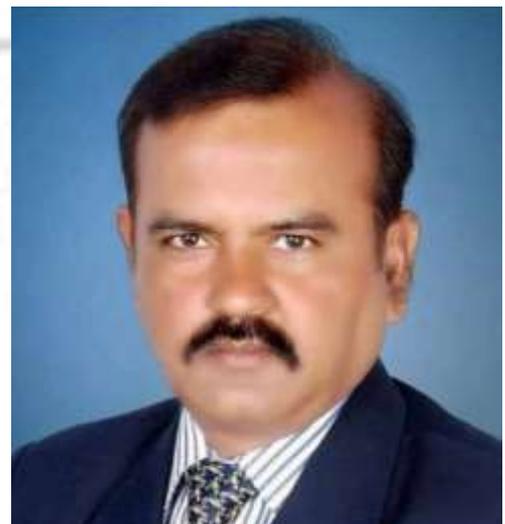
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

## **NEED OF GENDER-NEUTRAL LAWS IN INDIA: A STEP TOWARDS GENDER EQUITY.**

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### **Abstract:**

*“Equity means quality of being fair and unbiased.”* Gender equity implies being fair towards women, men and transgender. To achieve gender equity, we have to adopt the progressive and activist concept of gender neutrality in laws. In our Indian Penal Code, 1860, POCSO act, Domestic Violence act etc, there are various provisions which are not gender neutral. Sec. 354 of IPC talks about sexual offences and further Categorized into Outraging modesty, Sexual harassment, Disrobing, Voyeurism, Stalking, Rape, Unnatural offences. According to the definition of these offences as per the Indian Penal Code, victims of such sexual offences can only be women. Sec. 498 A specifically addresses violence against wives, holding men accountable for such actions, but it lacks any corresponding provision for men. The Bhartiya Nyay Sanhita (BNS) 2023, which officially replaced the Indian Penal Code (IPC) of 1860 on 1st July 2024, marks a significant overhaul of India's criminal justice system. However, an important question persists: has the BNS effectively resolved the longstanding issues and gaps present in the IPC? Apart from this, in Britain after the Wolfenden report 1957<sup>1</sup>, homosexuality was decriminalized, and sadly India took another 60 years to decriminalize consensual homosexual act. A marriage of homosexual person is still an unsolved issue in India. To achieve gender equity, there is a need of gender neutral laws also. From current scenario, it seems that, our legal system is overlooking an entire segment of victim. This article will analyze the need of making gender neutral laws and challenges in India through various judgements and current scenario.

**Keywords:** Equity, Gender, Gender Neutral, Sexual Harassment, Men Victim,

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<sup>1</sup> Wolfenden Report, Available at, <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/collections1/sexual-offences-act-1967/wolfenden-report-/#:~:text=The%20report%20proposed%20that%20there,longer%20be%20a%20criminal%20offen> , last seen on: 26/01/2024

## INTRODUCTION-

The Indian law is based on the view that, the victim of sexual harassment, rape, domestic violence can only be a woman. Historically women

The constitution of India guarantees to every “person” right to be treated equally before law, equal protection of laws, right to life and personal liberty, and also prohibits discrimination to it’s “citizens” on the grounds of religion race, caste, “sex” etc<sup>2</sup>. The Constitution also allows for reasonable classification and extends additional protections to women and children, as outlined in Article 15(3)<sup>3</sup>. While it is understandable and necessary to provide certain privileges and protections to women, it is equally important to recognize that men, too, can be victims in cases of sexual harassment, rape, and other forms of abuse. Under Sec 375 and 376 of IPC, only man can be convicted of committing rape on woman.<sup>4</sup> Sec. 3 of Protection of Woman From Domestic Violence Act, 2005 exclusively shields women from such violence, leaving men without protection. Unfortunately, the Indian Penal Code (IPC) of 1860 has not adequately recognized or protected the rights of men in these areas.

Over the years, as society has progressed, the IPC has undergone several amendments. However, despite these changes, the pressing issue of establishing gender-neutral laws has not been fully addressed. There was a significant expectation that the introduction of the Bhartiya Nyay Sanhita (BNS) 2023 would remedy this situation. However, the BNS has largely failed to fill the gaps left by the IPC in terms of gender neutrality.

For instance, while the BNS does introduce some progressive changes—such as expanding the definition of voyeurism under Section 77, where the term "whoever" is used to describe the perpetrator, making the offense gender-neutral compared to the IPC's Section 354C, which identified the perpetrator as a "man"—the law still identifies the victim exclusively as a "woman." This means that while anyone can be held accountable for the crime, only women are recognized as potential victims.

Similarly, Section 79 of the BNS, which corresponds to Section 509 of the IPC, criminalizes any act, word, or gesture intended to insult the modesty or privacy of a woman. Here again, while the perpetrator is now described in gender-neutral terms, the victim remains defined

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<sup>2</sup> Article 15 and 16: The Indian Constitution.

<sup>3</sup> Article 15 (3) : The Indian Constitution

<sup>4</sup> Sec. 375 and 376 of Indian Penal Code, 1860

solely as a woman.

These examples highlight a critical shortcoming in the BNS: although it takes steps toward inclusivity by making the identity of the perpetrator gender-neutral, it does not extend the same inclusivity to the definition of the victim. This oversight underscores the urgent need for legal reforms that acknowledge and protect the rights of men, thereby ensuring that the legal framework is genuinely gender-neutral and reflective of the realities of modern society.

### **INDIAN VIEW ON GENDER JUSTICE.**

Everyone, including children, has the right to make decisions about their own body and to be protected from any harm or interference against their body without their consent. This right is summed up by the principle of bodily autonomy and integrity.<sup>5</sup> The first rape law emerged in Babylon during c.1900 BC. The Code of Hammurabi dictated that, rape was merely a form of theft and vandalism, since women were considered property of men.<sup>6</sup> So the idea of Men rape was not even in existence before. Indian law operates on the premise that only a woman can be a victim of rape. This stems from the assumption that rape is purely an act of sexual gratification by the perpetrator. This belief stems from the presumption that rape is purely a sexual act carried out to satisfy the men's sexual desire. The common misconception that women are always the victims and men are always the offenders overlooks the reality that men, too, can be victims of sexual offenses and false accusations.<sup>7</sup> The outdated laws in India concerning sexual crimes, which fail to provide justice for men and transgender individuals, represent a serious issue that requires urgent attention.

The Indian Constitution upholds the principle of gender equality through various articles, including Articles 14, 15, 16, 39 and 42.

Article 14- ensures equality before the law and equal protection under the law. This implies that the State cannot discriminate between citizens, treating everyone equally in the eyes of the law. It also allows the State to implement positive discrimination to support disadvantaged

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<sup>5</sup> Bodily Autonomy: Child Rights International Network, Available at, <https://home.crin.org/issues/bodily-autonomy>, last seen on, 13/08/2024.

<sup>6</sup> A Brief History of Rape Law: Posted on December 13, 2019 by Brooke Flagler, Available at, <https://sites.williams.edu/engl113-f18/flagler/a-brief-history-of-rape-law/>, Last Seen on 10/05/2024

<sup>7</sup> Apoorva Upamayu, anshul Rana: Gender Neutral Law: a Critical Study, Published at IJLRA Vol 2 Issue 7, Available at, [https://www.researchgate.net/publication/366558309\\_GENDER\\_NEUTRAL\\_LAWS\\_-\\_A\\_CRITICAL\\_STUDY\\_INDIA](https://www.researchgate.net/publication/366558309_GENDER_NEUTRAL_LAWS_-_A_CRITICAL_STUDY_INDIA)

groups, such as affirmative action and special provisions for women.<sup>8</sup>

Article 15(1)- explicitly prohibits discrimination based on sex, stating that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth, or any combination of these. Article 15(3) further empowers the State to make special provisions for women and children.<sup>9</sup>

Article 16- guarantees equal opportunities in public employment or office, specifically forbidding discrimination based on sex. Article 16(2) ensures that no citizen is disqualified or discriminated against in employment or office under the State on the grounds of religion, race, caste, sex, descent, place of birth, or residence.<sup>10</sup>

Article 39 promotes equal livelihood opportunities for both men and women and the right to equal pay.<sup>11</sup>

Article 42- ensures just and humane working conditions and provides for maternity relief.

Additional provisions in the Constitution also support gender equality.<sup>12</sup>

Article 46- encourages the State to prioritize the educational and economic interests of weaker sections and protect them from social injustice and exploitation.<sup>13</sup>

Article 47- mandates the State to improve nutrition and the standard of living for its people.<sup>14</sup>

Article 51(A)(e)- promotes harmony and the spirit of common brotherhood among all citizens of India, renouncing practices that undermine the dignity of women.<sup>15</sup>

Article 243 D (3)- reserves at least one-third of the total seats in Panchayats for women, including those reserved for Scheduled Castes and Scheduled Tribes, with these seats allocated by rotation.<sup>16</sup>

Article 243 D (4)- reserves at least one-third of the positions of Chairpersons in Panchayats at each level for women.<sup>17</sup>

Women were often denied basic rights, such as the right to own property, vote, receive an education, or participate in public life. Not only this, women have historically been subjected to various forms of violence, including domestic violence, sexual harassment, and assault. Such

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<sup>8</sup> Article 14: The Indian Constitution

<sup>9</sup> Article 15: The Indian Constitution

<sup>10</sup> Article 16: The Indian Constitution

<sup>11</sup> Article 39: The Indian Constitution

<sup>12</sup> Article 42: The Indian Constitution

<sup>13</sup> Article 46: The Indian Constitution

<sup>14</sup> Article 47: The Indian Constitution

<sup>15</sup> Article 51: The Indian Constitution

<sup>16</sup> Article 243: The Indian Constitution

<sup>17</sup> Ibid

violence was often normalized or ignored by legal systems that lacked adequate protections for women. To meet the constitutional expectations, Indian legislature formed various laws in protection of women.

Some acts which have special provisions to safeguard women and their interests are:

- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956 with amendment in 2005
- Immoral Traffic (Prevention) Act, 1956
- The Maternity Benefit Act, 1961 (Amended in 1995)
- Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- Commission of Sati (Prevention) Act, 1987
- The Prohibition of Child Marriage Act, 2006
- The Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)

Act, 2013

- The Protection of Children from Sexual Offences Act, 2012.
- The Transgender Person's (Protection of Rights) Act 2019

There are numerous laws designed to protect women, but there have been instances where courts have found that these laws have been misused. For example, some legal provisions intended to safeguard women from domestic violence or harassment have occasionally been exploited, leading to false accusations or unjust legal actions. For example, *Sejalben Tejasbhai Chovatiya vs. State of Gujarat*<sup>18</sup>, *Arnesh Kumar vs. State of Bihar*<sup>19</sup> etc. This misuse can undermine the effectiveness of such laws and impact their credibility. Efforts are ongoing to address these issues by refining legal processes and ensuring that protections are applied fairly and justly.

While laws designed to protect women are crucial due to historical and ongoing discrimination and violence, it is equally important to ensure that legal systems are fair and just for everyone, regardless of gender.

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<sup>18</sup> *Sejalben Tejasbhai Chovatiya vs. State of Gujarat*, 17<sup>th</sup> July, 2017, Available at, <https://indiankanoon.org/doc/164173403/>

<sup>19</sup> *Arnesh Kumar vs. State of Bihar*, Available at, <https://indiankanoon.org/doc/2982624/>

## **Bhartiya Nyaya Sanhita, 2023 About Men Rape-**

Section 377 of the Indian Penal Code, originally drafted by Thomas Macaulay in the 1830s, addressed acts of bestiality and non-consensual sexual conduct.<sup>20</sup> Rooted in the Buggery Act of 1533 from British law, it was intended to penalize what were then considered “unnatural” sexual acts, including anal intercourse, bestiality, and homosexuality.<sup>21</sup> While the UK repealed its anti-homosexuality laws with the Sexual Offences Act of 1967, India retained Section 377 for much longer. It wasn't until the Supreme Court's landmark decision in *Navtej Singh Johar v. Union of India*<sup>22</sup> in 2018 that the provision was partially struck down—decriminalizing consensual same-sex relations between adults while retaining its applicability to non-consensual acts. With the enactment of the Bharatiya Nyaya Sanhita in 2023, which came into force on 1 July 2024, Section 377 was omitted altogether as part of an effort to reform colonial-era criminal laws. This omission, however, raised concerns, as Section 377 had uniquely provided legal protection for men and transgender persons against non-consensual sexual acts.

While Bharatiya Nyaya Sanhita was introduced with the intention of modernizing and replacing colonial-era laws, it has faced criticism for not incorporating the much needed gender inclusivity.. Despite expectations for progressive legal reforms, the new law continues to overlook the protection of male and transgender victims of sexual violence. This oversight reflects a major shortcoming in the reform process, especially in light of recent judicial decisions where cases have been dismissed due to the gender-specific language of existing provisions.

## **GENDER NEUTRALITY WITH RESPECT TO VICTIM-**

As per Section 2 (a) of the Code of Criminal Procedure 1973, “a victim is a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged.”<sup>23</sup>

Hence, one can say a victim is a **person** who has suffered harm, physical or mental injury,

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<sup>20</sup> Jus Corpus Law Journal: THE OMISSION OF SECTION 377 FROM THE BHARATIYA NYAYA SANHITA, available at <https://www.juscorpus.com/the-omission-of-section-377-from-the-bharatiya-nyaya-sanhita/>

<sup>21</sup> Ibid

<sup>22</sup> *Navtej Singh Johar V. Union of India*, 2018 7 S.C.R. 379

<sup>23</sup> Sec. 2 (a), Criminal Procedure Code, 1908

emotional suffering, economic loss or violation of their fundamental rights through act or omissions violative of Indian criminal laws. But, unfortunately, Indian laws are still based on the assumption that only women can be victims of certain specific offences. This perspective stems from the belief that sexual offences or harassment is solely an act driven by the perpetrator's sexual desires. However, increasing awareness recognizes that sexual assault is not just about sexual gratification but also about asserting power, dominance, and humiliation, often reflecting societal hierarchies and inequalities. Given this understanding, there is no justification for excluding men from being recognized as victims of rape in India.

This shows that the law is not gender-neutral. It is important to highlight that punishment for such crimes should be the same, no matter the victim's gender.

The landmark case *Vishakha and others v. State of Rajasthan*<sup>24</sup> helped protect women from sexual harassment at the workplace. However, similar protections for men and transgender individuals have not yet been introduced or discussed in law.

### **Challenging Gender Stereotypes in Sexual Offences and Criminal Law**

The question of whether a woman can commit a sexual offence has long been debated. Some argue, as feminist writer Susan Brownmiller did, that due to biological and societal factors—especially in a male-dominated society—it is not possible for women to rape men. Others disagree, insisting that it is not physically impossible and that women can be perpetrators too.

In the case *State Government v. Sheodayal* (1956)<sup>25</sup>, the Madhya Pradesh High Court acknowledged that a woman can violate the modesty of another woman under Section 354 of the Indian Penal Code (IPC), recognizing same-sex sexual assault. Similarly, in the landmark judgment *Priya Patel v. State of M.P.*,<sup>26</sup> the Supreme Court examined whether a woman can participate in gang rape, bringing further attention to women as possible offenders.

In *Yusuf Abdul Aziz v. State of Bombay*<sup>27</sup>, the Supreme Court ruled that women could not be prosecuted for adultery under the IPC, relying on Article 15 of the Constitution. However, this

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<sup>24</sup> AIR 1997 SC 3011

<sup>25</sup> Appeal (civil) 5657 of 2007

<sup>26</sup> AIR 2006 SC 2639 31954

<sup>27</sup> AIR 321, 1954 SCR 930

view was based on the outdated belief that women can only be victims, not perpetrators, of sexual crimes.

This stereotype was later challenged in *Anuj Garg v. Hotel Association of India*<sup>28</sup>, where Justices S.B. Sinha and H.S. Bedi stated that laws should not be based on fixed gender roles. They emphasized that such assumptions should not lead to unequal treatment or unfair burdens on any gender. As a result of this case, a rule that prevented women from working as bartenders (allegedly for their own protection) was struck down.

These judgments reflect a gradual shift in the legal system's approach to gender and crime. The recognition that women, like men, can be offenders—as well as victims—marks an important step toward gender-neutral laws. True justice requires that the law does not favour or excuse anyone based on gender but instead treats all individuals equally under the same legal framework. Moving forward, India must adopt a more inclusive legal approach that acknowledges the changing dynamics of gender roles in society and ensures accountability regardless of the perpetrator's gender. Only then can the criminal justice system be truly fair, equitable, and reflective of the realities of modern society.

### **Rape as a Tool of Power in Custody, Conflict, and Communal Violence-**

Rape has often been used as a weapon to spread fear and assert dominance during caste, class, and communal conflicts, as well as in custodial situations. These events must be understood differently from normal, everyday crimes. A person is not only defined by their gender (male, female, or LGBTQ+), but also by their caste, religion, or community.

In regular crimes, gender may be the key difference between victim and perpetrator. But in extreme situations—such as during war, riots, or police custody—identity based on caste, religion, or ethnicity becomes more significant than gender.<sup>29</sup>

One example is the Kathua rape<sup>30</sup> case, which shocked the nation. An eight-year-old girl, Asifa Bano, was raped and murdered as part of a communal hate crime. A temple priest, along with his son and nephew, carried out this brutal act. Eight men were accused of various crimes related to the case, including three government officials who tried to destroy evidence.

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<sup>28</sup> Appeal (civil) 5657 of 2007

<sup>29</sup> Gender Neutral Laws: A Critical Study in India, *ijlra*, Vol.2 Issue 7, Available at, [GenderNeutralPaper.pdf](#)

<sup>30</sup> *Mohd. Akhtar vs The State Of Jammu And Kashmir* on 7 May, 2018

This incident clearly shows that rape is sometimes used not just as a sexual crime, but as a way to create terror and enforce dominance in communal or political conflicts.

### **Beyond the Binary: The Struggles of the Transgender Community in India**

India has a rich cultural and mythological history that includes the presence of transgender individuals. The Hijra community, for example, traces its roots back to ancient epics like the Ramayana and the Mahabharata.<sup>31</sup> Despite this long-standing cultural presence, transgender people in India continue to face neglect and discrimination under the law and are often denied basic rights as equal citizens.

The term "transgender" refers to individuals who do not follow traditional gender roles in terms of identity, appearance, or expression.<sup>32</sup> This group includes hijras, kothis, and transsexuals. Some undergo surgeries to align their physical bodies with their gender identity, while others adopt the roles and expressions of the opposite sex.

Several studies in India have confirmed widespread violence against transgender persons.<sup>33</sup> A significant report by the People's Union for Civil Liberties – Karnataka (PUCL-K) investigated human rights violations against the transgender community in Bangalore. The findings were deeply disturbing. Many hijras reported being subjected to brutal violence, including beatings and threats of being disfigured with acid.<sup>34</sup>

Additionally, their sexuality often becomes a target of invasive curiosity and abuse. The report highlights how police officers regularly harass hijras—asking them inappropriate sexual questions, groping them, stripping them, and in some cases, raping them. Even when there is no direct physical violence, such acts severely violate their dignity, privacy, and sexual integrity.<sup>35</sup>

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<sup>31</sup> Narrain, S. (2003). Being a Eunuch. The Frontline, Retrieved from <http://www.countercurrents.org/gen/narrain141003.htm> on January 4, 2014.

<sup>32</sup> Meaning of Transgender, Available at, <https://www.healthline.com/health/transgender/what-is-transgender>

<sup>33</sup> Human Rights Commission on transgender Community: A study of Kothi and Hijra Sex Workers in Bangalore, India., Available at <https://archive.org/details/sochara.10062.humanrightsviola0000peop>

<sup>34</sup> Ibid

<sup>35</sup> Supra 28.

## Conclusion and Recommendations

This research has explored the urgent need for a gender-neutral rape law in India. The section on gender neutrality with respect to victims shed light on the alarming and often overlooked cases of sexual violence against men and transgender individuals. Evidence suggests that male-on-male rape, as well as sexual abuse against transgender persons, is a reality in India and must be acknowledged. This validates the first hypothesis: that sexual violence is not confined to female victims, and the law must reflect this broader reality.

The discussion then turned to gender neutrality with respect to both the victim and the perpetrator. Here, differing views were presented. Critics of full gender neutrality often cite the deep-rooted patriarchy in Indian society and express concern that it could dilute protections for women. On the other hand, proponents argue from the standpoint of equality before the law and point out the social stigma attached to male rape, which is rarely reported or addressed. After weighing both perspectives, the researcher concludes that while it is essential to acknowledge and address sexual violence against males and transgender individuals, this must not come at the cost of weakening the protection available to female victims. Achieving gender-neutral laws is a necessary goal, but it must be approached gradually. Considering the ongoing societal challenges and gender-based inequalities in India, a phased reform is more appropriate than an abrupt overhaul.

As recommended by the Justice Verma Committee, the first step should be to make the definition of the *victim* gender-inclusive while retaining a gender-specific definition of the *perpetrator*. This recommendation balances the need to protect vulnerable groups without compromising the safeguards for women. It also supports the second hypothesis of the study: that limited gender neutrality (i.e., gender-neutral victims with gender-specific perpetrators) can be a practical and balanced legal reform.

In the fourth chapter, the focus was on sexual violence during special situations such as war, custody, and communal or caste-based conflict. In such contexts, the dominant identity is not gender but religion, caste, or ethnicity. Here, the law should also recognize that women can be perpetrators, especially in cases of gang rape or abetment to rape during such violent events. Furthermore, urgent measures are needed to protect male inmates from sexual violence in custodial settings, particularly in prisons, where male-on-male rape is often ignored.

Thus, the third hypothesis is affirmed: sexual violence during conflict, custodial, and communal situations is driven by dominance and identity politics, where both men and women can be perpetrators, and victims are not limited by gender.

Recommendations:

1. Amend the definition of "victim" in Indian rape laws to be gender-neutral, ensuring inclusion of male and transgender individuals.
2. Retain gender-specific perpetrator provisions for now, to maintain protective measures for women until broader social equality is achieved.
3. Recognize women as possible perpetrators in special contexts such as war, communal violence, and gang rape incidents.
4. Implement custodial reforms, including stricter monitoring of prisons to prevent male-on-male sexual violence and establish grievance redressal mechanisms.
5. Train law enforcement officers on gender sensitivity and inclusivity, and create safer spaces for male and transgender individuals to report sexual violence.
6. Increase awareness through public campaigns and educational initiatives to reduce stigma around male and transgender sexual assault survivors.