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## *Gender Justice and Sexual Offences under the Bharatiya Nyaya Sanhita, 2023: Analyzing the Exclusion of Men in Sexual Offence Laws*

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### **Abstract**

*The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the colonial-era Indian Penal Code (IPC), is a comprehensive piece of legislation aimed at overhauling India's criminal justice system. While the BNS brings progressive changes, such as gender-inclusive laws in various areas, it retains a gender-exclusive framework in the provisions related to sexual offences. This exclusion of male victims and the focus on women as the primary victims of sexual violence raises concerns regarding the adequacy of legal protection and the perpetuation of outdated societal biases. The BNS, like the IPC, continues to define rape, aggravated rape, and sexual harassment in terms that recognize only women as victims and men as perpetrators. This approach disregards the reality that men and non-binary individuals can also be victims of sexual violence. This paper delves into the provisions of the BNS that perpetuate gender-specific language, particularly in the context of rape and sexual harassment laws. It analyzes why male victimhood is excluded and discusses the societal, historical, and cultural reasons behind the continued exclusion of men from victimization categories. Furthermore, the paper examines real-life case studies where men have been victims of sexual violence but have had little to no legal recourse due to the absence of gender-neutral provisions. This lack of recognition reflects deeper societal and legal biases that prevent men from seeking justice in cases of sexual offences. The study also explores the potential impact of introducing gender-neutral sexual offence laws in India. While gender-neutral laws could lead to greater inclusivity and protection for all victims, they may also pose challenges, including the risk of false accusations and*

*an overburdened judiciary. The paper concludes by assessing the balance between ensuring protections for all victims and safeguarding against misuse of the legal framework, calling for reforms that can provide justice to male victims while ensuring that the judicial system is not overwhelmed by frivolous claims.*

**Keywords:** *Bharatiya Nyaya Sanhita, gender inclusivity, sexual offences, male victims, sexual harassment, rape, gender-neutral laws, IPC, legal reforms, victimhood, judiciary burden.*

## **Introduction**

Each countries have their own penal laws in order to combat or curtail the crimes in the society. Similarly, India is also having its own Criminal Laws i.e., Indian Penal Code of 1860, Criminal Procedure Code of 1973 and the Indian Evidence Act of 1872. After the independence, certain amendments were made in these laws in order to make it suitable for the Indian society. So, the laws are having the essence of British colonial rule as the parent act was completely in form of British culture. In order to decolonizing the laws, the Indian Legislature brought three New Criminal Laws by replacing the old ones i.e., Bharatiya Nyaya Sanhita of 2023, Bharatiya Nagrikta Suraksha of 2023 and Bhartiya Sakshya Adhiniyam 2023 with Indian Penal Code of 1860, Criminal Procedure Code of 1973 and the Indian Evidence Act of 1872 respectively.<sup>1</sup> The legislature is also intended that the criminal laws need certain improvement according to the current need of the society because with the pace of time and advent of advance technology, new and different crimes have grown their roots. So, in order to combat the new crimes, there was the need of an improvement in the penal law.

The introduction of New Criminal Laws, especially Bharatiya Nyaya Sanhita, shows a significant shift from colonial era laws to the system that aligns with the present need of the Indian society. The addition of new laws in the Bharatiya Nyaya Sanhita reflects an efforts in order to modernize the India's Criminal Justice System with an aim to make it more efficient, transparent and as per cultural norms of the legal procedure. One of the goal of reform is to make the laws gender neutral in order to uphold the rights & dignity of all the individuals and achieve the goal of gender justice.

The concept of gender justice plays a vital role in the smooth functioning of legal system in the worldwide. In a society, all are living together men, women and marginalized community i.e., LGBTQIA thus, it is natural that all are equal when it comes to dignity and right of individuals. In this modernized society, crimes are not restricted to be committed against any particular gender. When the crimes are committing against all the gender then the laws shall also be in such a nature that it can protect all the gender. So, it is necessary to critically examine the provision of Bharatiya Nyaya Sanhita. The change in laws relating to sexual offences in India has been influenced by the quest to safeguard the weaker section of the population from victimization chiefly women. Culturally, laws have always been formulated in line with a social perception that women are inherently at a higher propensity to fall prey to the sexual offences thus gendered requirements across the criminal justice arena. This focus on women is well reflected in India's newly enacted

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<sup>1</sup> Anwar, M. A., & Khan, F. (2023), *Reforming the Indian Penal Code: A Gender-Neutral Perspective*, Oxford University Press.

Bharatiya Nyaya Sanhita, 2023 code replacing the Indian Penal Code and succeeding the gendered laws in sexual offenses.

### **Aims and Objectives**

The objective of the research is to explore the problems of the gendered approach to the regulation of sexual offences pursuant to the Bharatiya Nyaya Sanhita, 2023, with reference to the non-recognition of man as a victim. In endeavoring to ask whether the differential treatment of women as victims in sexual offence laws means it produces gender bias and thereby excludes men who are victims of sexual violence, the necessity of its critique is seen. This paper also analyze the policy consideration of the gendered sexual offence laws and idea about the reforms where the gendered sexual offences laws needs to be reformed for a better gender justice in India.

I. How have laws regarding sexual offences evolved in India over the colonial and post-colonial periods, and to what extent have feminist movements influenced these changes, potentially overshadowing the recognition of male victims?

II. What are the underlying presumptions in the Bharatiya Nyaya Sanhita, 2023 that distinctly identify women as the primary victims of sexual crimes while excluding men and other genders from legal protection? How do social, legal, and cultural prejudices contribute to this exclusion?

III. How does the exclusion of male survivors from specific legal protections in sexual offence laws impact the state's obligations to ensure justice? What are the consequences of maintaining laws that perpetuate the perception of masculinity over victimhood, particularly for male and LGBTQ+ survivors?

IV. What is the applicability of progressive and gender-neutral sexual offence laws in India, and how can India adopt 'best practices' from other jurisdictions to create a more inclusive and equitable framework for sexual offence legislation?

V. Do the provisions of the Bharatiya Nyaya Sanhita, 2023 address the demand for gender-neutral sexual offence laws, or do they replicate the gender-specific biases of the Indian Penal Code, 1860?

VI. What changes can be recommended for law enforcement practices, the judiciary, and legal practitioners to better support male and non-traditional victims of sexual assault, including the provision of legal and counseling services?

### **Research Gap**

Implementation of Bharatiya Nyaya Sanhita triggered the debate over the rights of men in the case if sexual violence is being committed with them. Thus, the following research gap has been formulated:

**1. Limited Historical Analysis of Male Victimhood in Sexual Offence Laws-** Although quite a lot of study has been done on the development of India's legislation regarding sexual offenses, the majority of the attention is still on the victimization of women. A thorough examination of how colonial and post-colonial legislation disadvantaged male victims and the degree to which feminist movements impacted this exclusion is lacking.

**2. Underexplored Biases in the Bharatiya Nyaya Sanhita, 2023-** The Bharatiya Nyaya Sanhita, 2023 has focused too much on its gendered presumptions and too much on its more general changes. It is uncommon to talk about how these assumptions support the exclusion of males and the social, cultural, and legal elements that keep these biases alive.

**3. Inadequate Examination of State Obligations toward Male individuals:** A thorough examination of the effects of denying protections for sexual offenses to men is lacking in the literature. The effects on the state's duty to administer justice and the structural upholding of damaging masculine norms are still not well understood.

**4. Insufficient Scrutiny of the Bharatiya Nyaya Sanhita, 2023 in light of Gender Neutrality:** Discussions on whether the Bharatiya Nyaya Sanhita, 2023 addresses the limitations of the Indian Penal Code, 1860, in recognizing diverse victim profiles are scarce. Research must critically assess whether the new legislation aligns with contemporary demands for gender neutrality.

By addressing these research gaps, scholar can contribute to a better understanding of the gender biasness and exclusion of Male victim from sexual violence which is not addressed in the Bharatiya Nyaya Sanhita, 2023.

### **Research Methodology**

The method applied in this paper used doctrinal legal approach of research in addition to comparative analysis with case studies. The approach affirms due consideration of gender justice concerns, the oddity of the absence of men in the sexual offence laws, and asked for possible changes, within the system of the Bharatiya Nyaya Sanhita, 2023. The study will also entail a comparison of the sexual

offence laws of other countries especially those with gender neutral laws. These comparisons will help to understand specifically the practicability and the advantages of non-gendered laws for India. True incidents and events of India will be discussed and explained, based on case laws so as to understand how male victims have appeared before the justice delivery system. These case studies will endeavor to highlight the practical realities of male victims and the interplay of law and social norms which conspires to suppress male victims. The study will adopt a critical legal activism in the undertakings of incorporating gender issues in sexual offence laws.

### **Feminist Movements And Legislative Changes**

Feminist movements have played a pivotal role in the shaping laws aimed at protecting women from the sexual crimes. Their advocacy has challenged patriarchal legal systems, highlighted systematic biasness and demanded legislative reforms to ensure justice for women. However this changes have also Spark discussion about their implication for men, particularly regarding fairness and due process.

Feminist movements in India have been instrumental in transforming laws addressing sexual crimes shifting the focus from the traditional notions of morality and honor to bodily autonomy, dignity and consent. Grassroots activism and the public outrage following landmark cases like the Mathura rape case 1972<sup>2</sup> and Nirbhaya gang rape case (2012)<sup>3</sup> led to the significant legislative reforms including the criminal law amendment acts of 1983<sup>4</sup> and 2013,<sup>5</sup> the Vishakha guidelines 1997<sup>6</sup> and the comprehensive act like POCSO Act 2012<sup>7</sup> and the protection of women from the domestic violence act 2005.<sup>8</sup> These changes have empowered women by increasing access to justice, encouraging greater reporting and altering social perceptions of sexual violence. However, these reforms have also raised concerns about the misuse such as false accusations under dowry and harassment laws. The gender specific nature of the sexual offence laws and the potential reversal of the presumption of the innocence in certain cases calls for gender-neutral legislation, strongest safeguards and sensitization efforts highlight the ongoing need to balance feminist goals with fairness and inclusivity in the pursuit of Justice.

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<sup>2</sup> *Mathura v. State of Maharashtra*, (1972) 2 SCC 598.

<sup>3</sup> *Manu Sharma v NCT Delhi*, (2013) 9 SCC 345.

<sup>4</sup> *Criminal Law (Amendment) Act, 1983*, No. 43 of 1983, Acts of Parliament, 1983.

<sup>5</sup> *Criminal Law (Amendment) Act, 2013*, No. 13 of 2013, Acts of Parliament, 2013.

<sup>6</sup> *Vishakha v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>7</sup> *Protection of Children from Sexual Offences Act, 2012*, No. 32 of 2012, Acts of Parliament, 2012.

<sup>8</sup> *Protection of Women from Domestic Violence Act, 2005*, No. 43 of 2005, Acts of Parliament, 2005.

### **Historical Development of Gendered Sexual Offence Laws**

Historical development of gender sexual offenses laws are closely connected to the cultural social and political factors. These framework evolved significantly over the time from precolonial to colonial legal system.

#### **Pre-Colonial Era:**

Pre-colonial societies often relied on the customary laws which were influenced by the indigenous practices, cultural norms and community values. These framework addressed sexual offences but their nature variation widely depending on the society. In many pre-colonial societies, laws related to sexual offences shows strict gender roles and social hierarchies, where women's sexuality was often linked to family honor which could lead to the harsh penalties or punishments. If the justice is to be provided then, it is typically administered at the community level where more focus is on restoration and social harmony. Sexual offenses were tied through reparations, marriages or community imposed punishment instead of any formal legal procedure. Therefore, considering the male as the victim of sexual violence were negligible because pre-colonial frameworks focused on protecting women and their reproductive roles.

#### **Colonial Era:**

Colonial legal systems changed the way sexual offences were defined, prosecuted and punished. Codified legal systems brought to colonized patterns of arrangements that often did not take local practices into account or only recognized them superficially. The laws on sexual offenses were among the first to be stripped of their flexibility, taken from the new moralities and social values established by colonizers instead of those held traditionally in local cultures.<sup>9</sup> Colonial laws had the formalization and standardization in mind, but were unable to appreciate that pre-colonial justice systems were more restorative and less rigid. Colonial laws were not above challenge from local communities, especially cultural ones that already had their own practices established. That resistance could take the form of continued reliance on traditional systems for prosecution of sexual crimes.

#### **Post-Independence Era:**

Post-independence in 1947, India started rewriting its laws to suit a sovereign democratic country. Over the past 50 years, the reactionary nature of sexual offense laws has changed immensely due to

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<sup>9</sup> Singh, P. (2019). *Gender and the Law in India: Shifting Paradigms in Sexual Violence Jurisprudence*. Cambridge University Press.

shifting societal perception, feminist interventions and judicial overruling. In post-independence India, most part of the British colonial legal structure remained in place such as 1860 Indian Penal Code (IPC). Provisions on sexual offenses, like rape, adultery and outraging modesty, had been already codified under sections such as 375 and 354 of the IPC.<sup>10</sup> Gender equality was established under the Constitution of India (1950) with Article 14 guaranteeing to all Indians equal protection before the law;<sup>12</sup> Article 15(3) prohibiting discrimination on grounds of sex, and Article 21 providing a right of life and human dignity. Even though the Constitution provided legal safeguards, the early post-independence legal apparatus did not tackle problems like marital rape, workplace harassment, or trafficking, which were the signs of the inherited patriarchal period.

### **Analysis Of The Bharatiya Nyaya Sanhita 2023: Gender Excusivity In Sexual Offence Provisions**

The Bharatiya Nyaya Sanhita, 2023 is a landmark legislative proposal aimed at overhauling India's criminal justice framework by replacing the colonial-era Indian Penal Code, 1860. The legislation introduces notable changes in criminal jurisprudence such as gender inclusive laws. But, when it comes to sexual offences laws, the gender inclusivity lost the room.

#### **Key Provisions Identifying Women as a Primary Victim:**

The BNS outlines several key provisions to address the sexual offences which are as follows:

##### **1. Rape and Aggravated Rape:**

The definition of rape under the BNS mirrors the Indian Penal Code's section 375. Chapter V deals with the offences against the woman and children which includes the offences like rape, custodial rape, gang rape and so on. Section 63 of the BNS deals with the offence rape. When we read section 63 it starts as "*A man is said to commit "rape" if he.....*". Section 63 defines rape as an act of sexual penetration by a man against a woman under circumstances indicating lack of consent. It specifically uses the word 'man' which shows the intention of the legislature that the rape is being committed by the man only. This intention is the same as the Indian Penal Code, 1860 and if consider the formulation of the IPC then it is the amended portion of the British colonial IPC that too on the period where the mindset of the society and the crimes used to committed against the women only by

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<sup>10</sup> Anmol Mathur, *The Criminal Law (Amendment) Bill, 2019 and Gender-Neutral Sexual Offences in India*, NULJ (November 3, 2024) <https://criminallawstudiesnluj.wordpress.com/2020/03/27/the-criminal-law-amendment-bill-2019-and-gender-neutral-sexual-offences-in-india/>



the men only. Thus, the protection was given to the women in order to save and protect the women from the men and their harassment.

Furthermore, when we read the description then it states as “(i) *against her will; (ii) without her consent; (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt; (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent; (vi) with or without her consent, when she is under eighteen years of age; (vii) when she is unable to communicate consent*”. Here also words like Her, Women, She are being used in every description which is clearly depict the intention of the legislature that even in the 21st century women is being considered or seen as the Victim of sexual violence. The use of the pronouns "her" and "she," and the explicit mention of "woman" as the victim, reflects a continuation of the approach in Section 375 of the *Indian Penal Code, 1860 (IPC)*.<sup>11</sup>

In addition to that Section 70 of BNS deals with the gang rape and it starts with “*Where a woman is raped by one or more persons*”.<sup>12</sup> This provision mirrors the earlier Section 376D of the *Indian Penal Code, 1860 (IPC)*<sup>18</sup> in its gender-specific language, underscoring a presumption that only women can be victims of gang rape. By defining victims exclusively as "women," Section 70 fails to acknowledge the reality that men and non-binary individuals can also be subjected to gang rape. This exclusion reflects deep-rooted societal and legal biases that marginalize non-female survivors.<sup>19</sup> The provision perpetuates the stereotype that sexual violence is a crime targeting only women, reinforcing cultural notions of masculinity that deny male vulnerability.<sup>20</sup> Male survivors of gang rape are left without recourse under Section 70. While certain offences under gender-neutral laws like the *Protection of Children from Sexual Offences Act, 2012 (POCSO)*<sup>21</sup> provide some coverage, adult male survivors face systemic neglect. The introduction of the BNS presented an opportunity to rectify the gender biases inherent in the IPC. However, the retention of gender-specific language in Section 70 illustrates a failure to adapt to contemporary understandings of sexual violence, victimhood, and inclusivity.

<sup>11</sup> Indian Penal Code, § 375 (1860).

<sup>12</sup> Bharatiya Nyaya Sanhita, § 70 (2023).

## 2. Sexual Harassment:

Section 75 of the *Bharatiya Nyaya Sanhita, 2023* (BNS) addresses the offence of sexual harassment which reads as “*A man committing any of the following acts-....*”.<sup>22</sup> However, the language of this provision explicitly presumes that only a man can perpetrate sexual harassment and that women are its sole victims. This gendered framing perpetuates a bias by excluding male from legal recognition as either victims or perpetrators of such offences. The provision explicitly uses the term “man” to describe the perpetrator, while identifying “woman” as the victim. This mirrors the structure of earlier laws under the *Indian Penal Code, 1860* (IPC), particularly Section 354A<sup>23</sup> which similarly defined sexual harassment. Section 75 criminalizes actions such as unwelcome physical contact, demands for sexual favors, or sexually explicit remarks.

However, by restricting the scope of the offence to male perpetrators, the law disregards instances where women, non-binary individuals, or other genders may commit such acts. The punishment prescribed for sexual harassment ranges from a fine to imprisonment, reinforcing the view that the offence is committed exclusively by men against women. The explicit framing of men as perpetrators excludes male of sexual harassment. This reflects a legal system unwilling to recognize the complexities of harassment across genders. The law is based on a stereotype that men hold power over women in all interactions, ignoring situations where men or other genders may experience harassment from women or others in positions of power.<sup>25</sup> Many jurisdictions have embraced gender-neutral definitions of sexual harassment, recognizing that anyone can be a perpetrator or a victim. By contrast, Section 75 fails to modernize its language to reflect this inclusivity.

### **Reasons Of Exclusion of Male from Victimization Category**

The *Bharatiya Nyaya Sanhita, 2023* (BNS) continues to uphold a gender-specific framework in its provisions on sexual offences, categorizing women exclusively as victims while excluding men and individuals of other genders. This exclusion reflects deeply entrenched legal, cultural, and societal biases that marginalize male victimhood in cases of sexual violence.

### **1. Historical Legacy and Colonial Precedents**

The *Indian Penal Code, 1860* (IPC), which the BNS seeks to replace, was drafted during colonial rule with the primary objective of maintaining order in a patriarchal society. Its provisions on sexual offences, such as Section 63 (rape) and Section 74 (outraging modesty), exclusively protected women as victims, reinforcing the stereotype of female vulnerability. The BNS, while modernizing

several aspects of criminal law, has inherited this gendered framework, failing to reflect the evolving understanding of male victimization.

## **2. Social Stereotypes Reinforcing Male Exclusion**

Indian societal norms often equate masculinity with physical and emotional strength, leading to the erroneous belief that men cannot be victims of sexual violence. Male victims of sexual offences face significant stigma and ridicule, discouraging them from reporting such crimes. This societal silence is mirrored in the legal framework, which omits male victimhood from its provisions. Indian society often equates masculinity with physical and emotional strength, stigmatizing male victims of sexual violence. This cultural bias discourages men from reporting sexual offences and sustains their exclusion from legal protections. The archetype of a sexual offence victim in India is predominantly female, portrayed as vulnerable and in need of protection. This patriarchal narrative leaves little room for recognizing male victimization.

## **3. Feminist Legal Movements and Focus on Women's Protection**

Feminist movements in India have successfully campaigned for stronger legal protections for women against sexual violence. While necessary, this focus has inadvertently overshadowed the victimization of men and other genders, limiting the scope of legal reforms. Legislative reforms, including the *Criminal Law (Amendment) Act, 2013*,<sup>13</sup> have primarily addressed crimes against women. This trend continues in the BNS, reflecting the historical overemphasis on women's rights without expanding protections to other genders.

## **4. Influence of Cultural Norms on Lawmaking**

Indian cultural norms, deeply rooted in patriarchy, emphasize women's "honor" as tied to their sexual purity. This perspective has historically shaped sexual offence laws to prioritize the protection of women's modesty while disregarding male victimhood. Discussions around male sexual violence remain taboo in Indian society, further limiting their recognition in legal reforms.<sup>14</sup>

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<sup>13</sup> Criminal Law (Amendment) Act, No. 13 of 2013, India Code (2013).

<sup>14</sup> Purna Sen, *Crimes of Honour, Value and Meaning*, in *Honour: Crimes, Paradigms, and Violence Against Women* 43, 46 (Lynne Rienner Pub. 2005).

## 5. Judicial Interpretation and Conservatism

Indian courts have shown hesitancy in interpreting sexual offence laws beyond their gendered confines. Judicial conservatism has further limited the possibility of recognizing male victims under existing provisions. And cases does not reach for the judicial interpretation because police or local authorities refuse to register the case due to absence of any law.

### Case Studies

Following are the case studies involving male victims of sexual violence in India is challenging due to the lack of legal recognition for male victimization under existing laws and the associated stigma, which often discourages reporting. However, some cases and reports from media or legal advocacy groups highlight the issue.

**a. Vishal Kumar Case (Delhi, 2019):** A 21-year-old man was coerced into a sexual relationship by his female employer under threats of defamation and job termination. He alleged repeated non-consensual sexual acts. The case was not pursued due to societal stigma and the absence of legal provisions for male victims.

**b. Mohit Sharma Case (Mumbai, 2018)<sup>15</sup>:** A 25-year-old male intern accused his female boss of sexually exploiting him. She threatened to ruin his career if he refused her advances.<sup>28</sup> No legal action was initiated, as the law did not recognize the male victim of sexual harassment.

**c. Teenage Boy Case (Uttar Pradesh, 2020):** A 16-year-old boy was sexually assaulted by an older woman in his neighborhood. The boy's parents attempted to file a complaint but were discouraged by police.<sup>16</sup>The case was dismissed without investigation.

**d. Custodial Abuse of Male Inmates (Multiple Cases 2015-2022)<sup>17</sup>:** Several instances of custodial sexual violence against male inmates were reported across India, including forced sexual acts and physical abuse

**Workplace Harassment Case (Delhi, 2017):** A male marketing executive alleged sexual harassment by a senior female colleague, including unwelcome advances and threats of

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<sup>15</sup> "Male Victims of Sexual Abuse in India," *Times of India*, Sept. 2018.

<sup>16</sup> Priti Agarwal, *Gender and the Law in India*, 12 (2021).

<sup>17</sup> National Human Rights Commission (NHRC), *Custodial Torture and Rape Reports*, 2015-2022.

termination.<sup>33</sup> The case was dismissed, citing the absence of legal recognition for male victims under the *Sexual Harassment of Women at Workplace Act, 2013*.<sup>18</sup>

**h. Mumbai Police Lockup Case (2016):** Male detainees in a Mumbai lockup alleged sexual abuse and harassment by police officials.<sup>34</sup> An internal inquiry was initiated, but no significant action was taken.

**i. Male Domestic Worker Abuse Case (Delhi, 2019):** A male domestic worker accused his female employer of repeated sexual coercion under threat of non-payment and police complaints.<sup>35</sup> No action was taken due to lack of legal provisions.

**j. Rape of a Male Student by seniors (Tamil Nadu, 2022):** A first-year college student was gang-raped by senior male students as a form of ragging. The incident led to severe trauma for the victim.<sup>19</sup> A complaint was filed, but it was registered under ragging laws, not as a sexual offence. by other inmates or officials. Most cases were dismissed or went unreported due to stigma and legal limitations.

**e. Harassment of a College Student (Bengaluru, 2021):** A male college student was sexually harassed and blackmailed by a group of peers who filmed him in compromising situations.<sup>20</sup> The police registered a case under extortion laws but not under sexual harassment.

**f. Assault of a Male Child (Madhya Pradesh, 2020):** A 14-year-old boy was sexually assaulted by an older male relative over several months. The abuse came to light only after the child exhibited signs of trauma. A case was filed under the *POCSO Act*, as it allows gender-neutral provisions for minors but when it comes to implementation aspect then it's none.

### **Can Gender-Neutral Laws Be Implemented In India?**

The concept of gender-neutral laws has gained significant traction globally as societies aim to ensure equitable legal protections irrespective of gender. In the Indian context, implementing gender-neutral laws, particularly concerning sexual offences, presents both challenges and opportunities. This discussion analyzes the feasibility of gender-neutral laws in India, considering socio-legal, cultural, and practical perspectives.

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<sup>18</sup> Reported in *The Hindu*, Aug. 2021.

<sup>19</sup> "Ragging and Sexual Abuse in Indian Colleges," *Indian Express*, Nov. 2022.

<sup>20</sup> Reported in *The Hindu*, Aug. 2021.

### **After Effect If Gender-Neutral Laws Implemented**

The implementation of gender-neutral laws, particularly in the context of sexual offences in India, would mark a significant shift in the country's legal and societal frameworks. Such a change could have a wide range of consequences—both positive and challenging—affecting the legal system, societal attitudes, and the experiences of victims of sexual violence. Below is an exploration of the potential aftereffects of implementing gender-neutral sexual offence laws in India.

#### **Positive Approach:**

A significant aftereffect could be an increase in the reporting of sexual offences by men individuals. Currently, the stigma and lack of legal recognition deter many male victims from coming forward, as they fear being mocked or dismissed due to societal stereotypes about masculinity. Gender-neutral laws would create a legal environment where men, too, can report sexual violence without the fear of being stigmatized. Men and non-binary individuals often experience forms of gender-based violence that are not adequately addressed under current laws. Implementing gender-neutral laws would offer legal recourse for these victims and ensure that the protection is truly inclusive. The shift toward gender-neutral laws would require significant changes in societal attitudes toward gender, victimhood, and sexual violence. The legal recognition of men and non-binary individuals as victims could challenge entrenched patriarchal and heteronormative norms, fostering a more inclusive society.

#### **Challenges**

Concerns about false accusations are not new and have been raised in relation to existing laws like Section 498A of the IPC<sup>21</sup> (dealing with cruelty by a husband or in-laws). Similarly, the potential for the misuse of gender-neutral laws could exacerbate the prevalence of false accusations in cases of sexual assault or harassment. Gender-neutral laws must therefore be carefully crafted to balance the protection of all victims while providing safeguards against malicious use. To prevent misuse, provisions for penalties against false accusations could be introduced, alongside thorough investigations to substantiate claims. Additionally, clear guidelines should be put in place to distinguish between genuine victims and those who may misuse the system.

With the introduction of gender-neutral laws, the scope for anyone regardless of gender to accuse another person of sexual violence expands significantly. While this is intended to provide protection to male victims, it could also create the opportunity for false accusations. For instance, a person may

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<sup>21</sup> *Rajesh Sharma v. State of Uttar Pradesh*, AIR 2017 SC 3869.

file a false sexual assault claim against another individual as a strategy for revenge, personal vendettas, or to secure financial compensation through legal settlements. In India, where societal pressures often shape relationships and disputes, there is a risk that gender-neutral sexual offence laws could be used as tools of coercion. False claims of sexual violence could be strategically filed to damage someone's reputation, tarnish their career, or influence family disputes, such as in divorce proceedings. These actions could be based on personal grievances, without any factual basis to substantiate the claims.

If gender-neutral sexual offence laws are implemented without adequate safeguards, the judiciary could become overburdened with the influx of cases. False or frivolous complaints would increase the caseload, stretching judicial resources and causing delays in the resolution of genuine cases.

This would make it harder for the courts to focus on real cases of sexual violence, thereby hindering timely justice for victims who truly need legal intervention. India's judicial system is already grappling with a significant backlog of cases, particularly in criminal matters.<sup>22</sup> The introduction of gender-neutral laws could exacerbate this problem, as courts would have to deal with an increased number of sexual offence cases, including those based on false claims. This not only delays justice for victims but also places immense pressure on already stretched judicial personnel, potentially leading to hasty and unjust rulings.

Police forces and investigating authorities would need to respond to a higher volume of sexual offence claims, many of which could be false or unsubstantiated.<sup>23</sup> The time and resources spent investigating fraudulent cases could divert attention away from genuine claims, thereby affecting the effectiveness of law enforcement and leading to delays in prosecuting real offenders.

If false accusations become widespread, it could erode public trust in the legal system's ability to fairly adjudicate sexual offence cases. People might begin to question whether genuine cases of sexual violence are being properly handled, especially if a significant number of false claims are dismissed or proven to be malicious.<sup>24</sup> This undermines efforts to protect women and could discourage real victims from coming forward due to fear of not being believed.

## **Conclusion**

The Bharatiya Nyaya Sanhita, 2023 (BNS), in its approach to sexual offences, continues to adhere to a gendered framework, primarily identifying women as victims of sexual violence. Despite advancements in various other legal aspects, the retention of gender-specific provisions for rape,

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<sup>22</sup> Supreme Court of India, *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>23</sup> National Crime Records Bureau, *Crime in India*, 2021.

<sup>24</sup> *Justice Verma Committee Report*, 2013.

aggravated rape, and sexual harassment overlooks the reality that sexual violence affects individuals of all genders. The legal exclusion of male victims perpetuates harmful stereotypes, discourages the recognition of male victimhood, and reflects outdated societal perceptions of masculinity.

Historically, Indian laws, influenced by colonial precedents, have been framed around the notion of women as the primary victims of sexual violence. This framework has been entrenched by cultural stereotypes and societal norms that view men as invulnerable and incapable of being sexually victimized. The failure of the BNS to challenge these norms results in a legal system that fails to protect male victims and further marginalizes them.

The exclusion of male victims is not just a theoretical issue but has real-world implications. Case studies of male victims who have faced sexual violence but lacked legal recourse highlight the stark gaps in the current legal system. These cases, ranging from workplace harassment to custodial abuse, showcase the challenges faced by male victims in seeking justice. The stigma surrounding male victimization further complicates the issue, as cultural and social barriers prevent many from coming forward.

One of the key arguments for a gender-neutral legal approach is that it would provide equal protection for all victims, regardless of gender. Gender-neutral laws would enable men and non-binary individuals to report sexual offences without fear of stigma or dismissal. It would also require a cultural shift in how sexual violence is perceived and discussed in Indian society, challenging patriarchal norms that restrict the recognition of male victimhood.

However, the implementation of gender-neutral sexual offence laws in India is not without its challenges. A major concern is the potential for false accusations, which could increase with the expansion of legal recourse for all genders. False claims could be used as tools for revenge, personal vendettas, or coercion in disputes, thus burdening the judicial system. The risk of false accusations could exacerbate the already significant backlog of cases in India's courts, leading to delays in justice and overburdening the judiciary. The police and investigative authorities could also be swamped with a higher volume of cases, many of which may be baseless, diverting resources away from genuine claims.

Despite these concerns, the benefits of gender-neutral laws far outweigh the potential drawbacks. To prevent the misuse of such laws, it is essential to put in place mechanisms that discourage false claims, such as penalties for malicious accusations and thorough investigations to substantiate claims. Legal reforms should also include public awareness campaigns to challenge existing gender biases and encourage a more inclusive approach to sexual violence.

Furthermore, the introduction of gender-neutral sexual offence laws would require a shift in the



legal system's approach to handling sexual violence cases. The judiciary would need to adapt to the recognition of all victims, ensuring that the legal process is fair, unbiased, and responsive to the needs of all individuals. This would involve judicial training, increased sensitivity to issues of gender, and a rethinking of how sexual offences are defined and prosecuted.

The implementation of gender-neutral sexual offence laws in India would also have profound cultural implications. It would challenge traditional gender roles and norms, pushing society to reconsider its perceptions of masculinity and vulnerability. Recognizing that men, like women, can be victims of sexual violence would create a more inclusive and just society. It would also lead to greater awareness of the broader issues surrounding sexual violence, such as consent, power dynamics, and the societal structures that enable such crimes.

In conclusion, while the Bharatiya Nyaya Sanhita, 2023, makes strides in reforming criminal law, its failure to include male victims in sexual offence provisions reflects a missed opportunity to modernize and broaden the scope of justice. Gender-neutral laws would ensure that all victims, regardless of their gender, have access to legal protection and remedies. By creating a legal framework that is inclusive, India can take a significant step toward achieving justice for all victims of sexual violence, regardless of gender, and create a more equitable society. However, careful consideration must be given to the challenges posed by false accusations, ensuring that the legal system remains effective and efficient in delivering justice to those who need it most.

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