



GENDER-SPECIFIC VERSUS GENDER-NEUTRAL LAWS ON SEXUAL OFFENCES: EXAMINING LEGAL GAPS IN INDIA THROUGH A COMPARATIVE STUDY WITH OTHER NATIONS

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ABSTRACT :

This paper examines whether Indian laws on sexual offences should adopt a gender-neutral approach centered on consent and the nature of the sexual act. It analyses Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS), which defines rape in terms of a male offender and female victim, and considers whether this framework adequately protects men, transgender persons and other survivors. The study also reviews other gender-specific provisions under the BNS, the POSH Act, the Protection of Women from Domestic Violence Act and the Indecent Representation of Women (Prohibition) Act. It considers the constitutional principles of equality, dignity, privacy and personal liberty, relevant judicial decisions, and reported incidents involving male survivors. A comparative analysis of South Africa, Canada, Germany, Sweden, Finland and Denmark explores how other jurisdictions frame sexual offences around the person affected and the absence of consent. The paper argues that gender-specific definitions may leave gaps in legal recognition, accountability and access to remedies. It recommends using inclusive terms such as “person” and “complainant”; extending offence definitions and perpetrator liability across genders; addressing non-consensual sexual acts not covered by existing provisions; and providing accessible, gender-inclusive support services. The study concludes that reform should ensure equal protection for all survivors while remaining responsive to the distinct experiences and needs of women and other affected groups.

Keywords; Gender-Neutral, Equality, Sexual Acts, Survivor Protection

INTRODUCTION

Sexual offences violate bodily autonomy, dignity, privacy and sexual integrity. Traditionally Indian criminal law has been influenced by gender- based assumptions about the offender and victim. Therefore, an important contemporary issue is whether sexual offences, particularly rape should remain gender- specific or be made gender- neutral, so that legal protection is based primarily on absence of consent and the nature of the sexual act, rather than the sex or gender of the parties.

Firstly, The Indian Constitution guarantees equality under Article 14, freedom under Article 19 and life and personal liberty under Article 21. Together, these provisions protect gender equality, dignity and individual autonomy.¹

Bharatiya Nyaya Sanhita, 2023 (BNS) Section 63 defines rape in gender - specific manner, focusing on a man committing rape against a woman.²

Thus, a question arises whether rape law should be gender - neutral, particularly where the focus is not the absence of consent and the nature of the sexual act rather than the gender of the offender or victim.

The criminal law (Amendment) Act, 2013 brought a significant change in Indian rape law. It broadened the definition of the rape under Section 375 IPC to include penetration by the penis as well as insertion of an object or anus, and other specified sexual acts. It also strengthened the legal understanding of consent. However, despite this wider definition of sexual acts, the provision continued to be gender specific, as rape was defined as an offence committed by a “man” against a “woman”.³

“Insertion of any object into a private part also can be committed by women, so victim or accused can be women or men, then why the offence of rape in not gender-neutral?”

¹ The Constitution of India, 1950

² The Bharatiya Nyaya Sanhita, 2023 s 63

³ The criminal law (Amendment) Act, 2013

The criminal law (Amendment) Act, 2018 further strengthened the law relating to sexual offences particularly offence against children. It introduced stricter punishment for rape of women below 16 years and below 12 years, including provisions for aggravated and gang rape.⁴

These amendments primarily strengthened punishment and protection rather than making the basic offence of rape gender - neutral.

However, despite this progressive amendment, the gender - specific approach to the offence of rape continues under BNS, 2023. This creates a significant issue of gender neutrality because such sexual acts are not, by their nature, capable of being committed only by male offenders. Consequently, the present formulation may leave certain situations involving male, transgender or other victims outside the definition of the rape, while the gender of the offender also determines whether the conduct falls within section 63.

This gap provides an important basis for examining whether Indian rape law adopt a more gender - neutral and person - centered approach based on the nature of the sexual act and absence of consent.

In contrast, the Protection of Children from Sexual Offences Act, 2012 (POCSO) adopt a gender - neutral approach by using the expression "A person" in defining sexual offences against children.⁵ This difference between the gender - neutral framework of POCSO and the gender - specific formulation of rape under section 63 of the BNS highlights the needs to examine whether similar protection should be considered for adult victim.

Indian Penal code, 1860 section 377 earlier covered certain "Unnatural Offences" in gender - neutral terms. In Navtej Singh Johar v. Union of India⁶ (2018) the Supreme Court decriminalized consensual sexual offences relation between adults in private under section 377. However, protection against non - consensual sexual acts remains necessary.

The BNS transition raises the issue of whether a gender - neutral sexual offences provisions are needed for certain cases involving adult victim.

The research comparative examination of the legal framework of Canada, South Africa, Germany, Sweden, Finland, Denmark, Brazil and Kenya, with particular emphasis on the statutory definitions of rape, terminology relating to victim and offenders, consent standards, penetration-based definitions and the extent to which the respective laws adopt a gender - neutral approach.

The main aim is to identify gaps in Indian rape law and possible legal response.

Thus, an important issue is whether sexual offences should be made gender - neutral, focusing primarily on absence of consent and the nature of the sexual act.

Overall, the study examines whether gender - neutral sexual offence laws can strengthen protection and provide more equal legal remedies.

LEGISLATIVE FRAMEWORK

In the Indian legal framework regarding sexual assault the legislature has enacted various legislations to deals with it and protect women mainly through a gender specific approach.

These laws are existed in following ways:

A. Bhartiya Nyaya Sanhita 2023 (BNS)

Chapter v of the BNS deals with "offences against women and children". The specific sections regarding sexual assault / rape are categorized as follows:

- **Section 63: Rape⁷**

‘A man is said to commit "rape "if he -

- a. Penetrates his penis to any extent into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person or
- b. Inserts to any extent any object or a part of the body, not being the penis into the vagina, the urethra or anus of a women or makes her to do so with him or any other person or
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra anus or any part of body of such woman or makes her to do so with him or any other person
- d. Applies his mouth to the vagina, anus urethra of a women or makes her to do so with him or any other person

Under the circumstances falling under any of the following seven descriptions: -

1. Against her will
2. Without her consent
3. Consent under fear
4. Misrepresentation of marriage
5. Incapacity to consent
6. Statutory rape
7. Inability to communicate ‘

⁴ The criminal law (Amendment) Act, 2018

⁵ The Protection of Children from Sexual Offences Act, 2012

⁶ AIR 2018 SC 4321

⁷ The Bhartiya Nyaya Sanhita 2023 s 63

- **Legal analysis of section 63**

Section 63 of the BNS applies exclusively when "a man" commits the act against "a women". However, the 7 circumstances mentioned in the definition like fear intoxication or lack of consent are universal human experiences that can happen to anyone regardless of gender.

After the repeal of sec 377 IPC expanding this provision to protect adult man and transgender victims would better fulfill the promise of equality under Article 14 of the constitution.

- **Section 69: - sexual intercourse by deceitful means⁸**

Section 69 criminalizes sexual intercourse by deceitful means specifically covering instances where consent is obtained through a false promise of marriage, employment, promotion, or by marrying after concealing one's identity. The text applies specifically when "a man" employs these deceitful means against "a women".

- **Legal analysis: -**

While this provision effectively addresses the serious issue of sexual exploitation through fraud its application remains strictly gender specific.

Deceitful practices such as a false promise of marriage or concealment of identity are fraudulent behaviors that can be experienced by individuals of any gender.

- **Section 70: - Gang rape⁹**

This section deals with gang rape prescribing secure punishments like life imprisonment or death but restricts the liability to acts committed only against "a women".

- **Legal analysis: -**

While this law rightly addresses collective violence it completely excludes adult male and transgender survivors expanding its scope would provide equal legal safety to every citizen against group - based sexual atrocities.

- **Section 74: - outrage modesty¹⁰**

This section penalizes the use assault or criminal force against "a women" "with the intention to outrage modesty.

- **Legal analysis: -**

Modesty, dignity and bodily respect are universal values applicable to all human beings. By restricting this protection exclusively to women, the law leaves man and transgender individuals completely unprotected against public harassment and physical stalking, which directly affects they're to a safe environment.

- **Section 75: - sexual harassment¹¹**

This section defines sexual harassment as unwelcome physical contact, a demand or request for sexual favour making sexually colored remarks, or showing pornography against the will of "a women". The offender is specified as "a man".

- **Legal analysis**

Sexual Harassment can happen to anyone at work or in public places. By limiting this protection only to women, the law leaves man and transgender individuals completely unprotected against unwanted sexual comments or behavior. Making section 75 of the BNS gender neutral is necessary to ensure safety and equal rights for every single citizen.

- **Section 77: - voyeurism¹²**

Section 77 defines voyeurism as watching capturing or sharing image of "a woman" engaging in a private act where she expects privacy. The text uses the neutral word "whoever" for the criminal but limits the protection only to a female victim.

- **Legal analysis**

Right to privacy and bodily dignity belong to every human being equally. By protecting only women this section overlooks the reality that man and transgender individuals can also have their private moments captured or circulated without their consent. Making section 77 of the BNS gender neutral on the victim's side is important to secure the privacy rights of all citizens.

- **Section 78: - Stalking¹³**

Section 78 defines stalking as following "a women" trying to contact her repeatedly against her will, or monitoring her internet and social media usage. The law specifies the criminal as "any man".

- **Legal analysis**

Stalking and cyber stalking are digital age threats that can target any individual. Limiting this protection strictly to women leaves man and transgender individual vulnerable to offline and online harassment.

⁸ The Bhartiya Nyaya Sanhita 2023 s 69

⁹ The Bhartiya Nyaya Sanhita 2023 s 70

¹⁰ The Bhartiya Nyaya Sanhita 2023 s 74

¹¹ The Bhartiya Nyaya Sanhita 2023 s 75

¹² The Bhartiya Nyaya Sanhita 2023 s 77

¹³ The Bhartiya Nyaya Sanhita 2023 s 78

Making section 78 BNS gender neutral is crucial to protect the digital privacy and physical safety of all citizens equally. Examining Sections 63, 69, 70, 74, 75, and 77 of the BNS reveals that these provisions remain strictly gender-specific, shielding only female victims from male perpetrators. To uphold the constitutional mandate of equality under Article 14, it is imperative to amend these laws into a completely gender-neutral framework that protects every individual irrespective of their gender identity.

B. Others legal provisions

Apart from the BNS, several other special legislations in the Indian legal system are also strictly gender-specific. These laws are drafted with a traditional mindset that only visualizes women as victims and men as perpetrators. Therefore, it is important to analyze these other frameworks to understand the urgent need for a completely gender-neutral legal system.

I. The indecent representation of women acts 1986

This act prohibits the incident or derogatory depiction of a women's figure from or body in advertisement, publication, writings and paintings under section 3 and section 4. Publishing or circulating any material that portrays women obscenely is a punishable offence.¹⁴

• Legal analysis

Obscene or bad portrayal in media and advertisement can target any individual. By protecting only women from indecent representation, the law ignores the fact that man and transgender individual can also be objectified or misused in media. To protect the dignity of every human body equally, this law must made gender neutral.

II. The POSH act 2013

Under section 2(a) of the posh act, the protection against sexual harassment at the work place is strictly limited to an "aggrieved woman".¹⁵

• Legal analysis

Workplace safety is a basic Right for every employee, but this law completely excludes man and transgender individuals from filing harassment complaints. Making the posh act gender neutral is necessary to provide equal protection and a safe working environment for the entire modern work force.

III. The protection of women for domestic violence act 2005

The Protection of Women from Domestic Violence Act, 2005 is a special legislation enacted to protect women from violence within the household. However, it is strictly gender-specific because Section 2(a) defined by the law states that only an "aggrieved person" (victim) can be a woman, meaning the law legally recognizes only women as victims of domestic abuse and excludes men and transgender individuals.¹⁶

• Legal analysis

Violates Constitutional Equality: Restricting protection only to women violates the mandate of Article 14 (Right to Equality) and Article 21 (Right to Life and Dignity), as trauma and cruelty within a home can be faced by any human being regardless of gender.

Creates a Legal Vacuum: By assuming only men can be perpetrators and only women can be victims, the law leaves abused men and LGBTQ+ individuals with no specific civil remedy against domestic cruelty.

Domestic violence is a crime of behavior, not gender. Therefore, to protect every individual's fundamental right, this Act must be amended to a gender-neutral framework.

COMPARATIVE ANALYSIS WITH OTHER NATIONS

In India, the present laws which deals with sexual offences mainly focus on sexual offence against women. The law specifically uses terms like "women" and "female", which shows that the law mainly takes a female - centered approach towards sexual offences.

However, there are no specific provisions which equally protect men from all forms of sexual offences. Therefore, this research paper aims to compare Indian legislation with the laws of various other countries and to understand how they deal with sexual offences in gender - neutral manner.

The main purpose of this comparison is to understand whether sexual assault laws should protect all persons, irrespective of their gender and how different countries have developed their laws in this regard.

The following countries have been selected for comparison:

1. South Africa
2. Canada
3. Germany
4. Sweden
5. Finland
6. Denmark

¹⁴ The indecent representation of women acts 1986 ss 3-4

¹⁵ The protection of sexual offences at workplace act, 2013 s 2(a)

¹⁶ The Protection of Women from Domestic Violence Act, 2005 s 2(a)

A. South Africa

Criminal law (sexual offences and related matters) amendment act, 2007¹⁷

According to section 3 of this act, any person who unlawfully and intentionally commits an act of sexual penetration with a complainant, without consent of the complainant, is guilty of offence of rape. The use of the term "person" is important because it does not restrict the offence only to females. Therefore, any person can be a victim of rape and any person can also be a perpetrator.

Thus, South Africa provides protection against sexual offences irrespective of gender.

B. Canada

Criminal code (RSC, 1985 c. C-46)¹⁸

Canada does not have a separate offence called "rape" in the same way as some traditional criminal laws. The law uses the broader concept of "sexual assault". The present provision mainly deals with sexual assault under section 271-273 of the criminal code. Which says that everyone who commits a sexual assault is guilty of an offence. The important point is that the law uses gender-neutral terms such as per "person", "complainant" and "accused".

Gender neutrality -

The Canadian law does not assume that only women can be victims of sexual assault. Both males and females can be victims as well as accused persons. Therefore, Canada's sexual assault law follows a gender-neutral approach.

C. Germany

German Criminal code (Strafgesetzbuch -StGB)¹⁹

Section 177 of the German Criminal code (StGB) criminalizes sexual assault, sexual coercion and rape. The provision focuses on sexual acts committed against a person's will. The law uses a gender-neutral approach by focusing on the person affected by the offence, rather than limiting the protection only to women.

Gender neutrality -

The German law recognizes that: A person can be a victim irrespective of gender. A person can also be a perpetrator irrespective of gender. The main focus is on the absence of consent and sexual act.

Therefore, German law provides a gender - neutral framework for dealing with sexual offences.

D. Sweden

Swedish Penal code (Brottsbalken)²⁰

Chapter 6 section 1 concerns rape.

A person is guilty of rape if they engage in sexual intercourse or a similarly serious sexual act with someone without person's free and willing consent.

Gender neutrality -

Sexual offences are generally described by using term "person" rather than restricting the victim or a perpetrator to a particular gender. Thus, the Swedish Criminal code focuses more on consent and sexual act than on the gender of the persons involved.

E. Finland

Criminal code of Finland (39/1889)²¹

Chapter 20 of criminal code of Finland deals with sexual offences.

The law deals with offences such as -

Section 1. Rape

Section 2. Sexual assault

Section 3. Other sexual offences

Gender neutrality-

The provisions use the term "person", which makes the law gender neutral.

The use of this term allows the law to include different categories of individuals as victim or accused persons.

Therefore, the Finnish approach is not restricted only to sexual offences committed by men against women.

F. Denmark

• Danish criminal code (straffeloven)²²

Section 216 of chapter 24 of the Danish Criminal code defines and criminalizes the offence of rape. The Danish law focuses on sexual intercourse without consent. The law does not limit the offence only to a particular gender. Instead, it focuses on whether the person has given consent to the sexual act.

¹⁷ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa)

¹⁸ Criminal code of Canada, 1985 (Canada)

¹⁹ German Criminal code (Strafgesetzbuch -StGB), 2016

²⁰ Swedish Penal code (Brottsbalken), 1965

²¹ Criminal code of Finland (39/1889)

²² Danish criminal code (straffeloven), 1930

- **Gender neutrality -**

The gender neutral means that a person can be a victim or a perpetrator irrespective of their gender. Therefore, Danish law gives importance to consent rather than gender.

JUDICIAL PRONOUNCEMENT

Priya Patil vs State of M.P (2006)²³

The Supreme court cancelled the charge of gang rape u/s 376 (2) of the IPC against Priya Patil. Court held that the women cannot be prosecuted for the offence of gang rape. The court said that section 376 (2) g which deals with gang rape, has to be read together with section 376 which defines rape. Since section 375 says that rape is an offence committed by a man, and a women cannot be directly charged with the offences of gang rape under this section. However, this does not mean that a women can never be held responsible for their involvement in rape. If the facts of the case support it, she may be charged for abetment.

Smt. Sudesh Jhaku vs K.C.J and others (1996)²⁴

The Delhi high court held that, under section 375 IPC, the definition of rape could not be expanded by the court beyond the words used in laws. The court therefore did not treat penetration by a finger or an object as rape under that provision. The court observed that changing the definition was a matter for the legislation. The court also emphasis that child victim of sexual abuse should be treated with care while giving evidence. Question should be simple and understandable; the child should be given breaks when needed and supportive person could be used to reduce the child's fear and discomfort.

Gantavya Gulati vs U.O.I (2024)²⁵

It is a Public interest case in the Delhi high court addressing a legal gap problems in the BNS regarding nonconsensual unnatural sexual acts .This case addresses problem regarding BNS sexual assault provisions which did not contain provisions of unnatural sexual assault ,which was abolished in the case of Navtej Singh Johar vs U.O.I and repealed section 377 from IPC in 2018 that has not been including in BNS.BNS,2023 did contain an equivalent provision for the protection of persons from non-consensual acts including members of LGBTQIA+ community.

Pooja Sharma vs U O.I.²⁶

In this matter the Supreme court denied to include males, transfer and animals as a victim of sexual assault or rape under BNS,2023 and rejected PIL of pooja Sharma.

Navtej Singh Johar vs U.O. I²⁷

In this case the Supreme court decriminalized section 377 of IPC which considers unnatural consensual sexual intercourse between adults as a crime. In this case the Supreme court struck down and declare section 377 as unconstitutional and found against morality article 14 ,19, 21 of the Indian constitution.

Alakh Alok Srivastav vs U.O.I²⁸

In this case Supreme court gave direction and guidelines to the high court to take Suo moto cognizance and establish special court regarding POCSO, Act the Supreme court directed that POCSO case should be decided speedily and without unnecessary delay. It also emphasized that children should be treated with care, dignity and sensitivity during the trial. The court direct the proper functioning of special courts and effective implementation of the POCSO act to protect children's victims and ensure timely justice also court gives directions regarding the training to deal with matters.

RECENT INCIDENTS

- **Police custody misconduct case²⁹**

Haryana Police suspended two assistant sub inspectors and a home guard personnel member after a 30-year-old male bone cancer patient alleged he was assaulted and sexually abused inside a local Kurukshetra police station.

- **Jalandhar male sexual assault incident³⁰**

The most high-profile male abuse incident associated with Jalandhar involves a male factory worker who reported a horrific abduction and sexual assault.

Incident: The victim, a married labour working in a local leather factory ,alleged that four women in their early twenties stopped him under the pretext of asking for directions on Kapurthala road .They sprayed an intoxicating chemical into his eyes, forced him into a white car, drugged hum with alcohol, took turns sexually assaulting him in a secluded forest area. Hello was later dumped at 3.00 A.M with his hands tied and eyes covered. Action taken No

²³ AIR 2006 SC 2639

²⁴ 1998CRILJ2428

²⁵ Gantavya Gulati vs Union of India on 28 August, 2024

²⁶ Pooja Sharma vs U O.I, 2024

²⁷ AIR 2018 SC 4321

²⁸ AIR 2018 SUPREME COURT 2440

²⁹ <https://timesofindia.indiatimes.com/city/chandigarh/cancer-patient-sexually-abused-inside-haryana-police-station-3-cops-suspended/articleshow/131878707.cms>

³⁰ [Jalandhar: Man alleges he was kidnapped, gang-raped by four girls in their 20s | Times Now](#)

F.I.R was filled by the victim. After examine these cases and incident there should be the need of gender-neutral law regarding the sexual assaults to serve a better and equal laws for individual of India to protect their personal liberty

RECOMMENDATION

Reforming sexual offence laws to make them gender neutral requires expanding the legal definitions, adopting inclusive language, and balancing the protection of survivors with proper accountability for all gender identities. The following recommendations outline the steps required to achieve gender neutrality in sexual offence laws:

A. Use of gender-neutral terms:

First of all, there should be a change in terms such as “men” and “women”. These terms should be replaced with gender-neutral words such as “person”, “perpetrator”, “victim”, and “complainant”, so that the law can include individuals irrespective of their gender.

B. Expanding the scope of sexual offences:

The area and scope of the existing legal framework should be expanded. The law should not be limited only to non-consensual penetration by body parts or objects, but should also cover other forms of sexual acts which are performed without consent.

C. Consent obtained through deceitful means:

Along with expanding the scope of non-consensual intercourse, the law should also properly deal with consent obtained through deceitful or fraudulent means. This will help in providing protection to individuals where consent is given because of deception or false representation.

D. Gender-neutral liability of the perpetrator:

The liability for sexual offences should be gender neutral. The law should focus on the act committed and the absence of consent rather than on the gender of the person who committed the offence.

There should be an appropriate provision under the penal laws to deal with non-consensual unnatural sexual intercourse, in a gender-neutral manner.

The punishment for sexual offences should also be gender neutral and should apply equally to the perpetrator irrespective of gender.

The victim support system should also be gender neutral so that every survivor can receive proper legal, medical and psychological support irrespective of their gender.

E. Awareness campaigns:

Awareness campaigns should be conducted regarding sexual offences in order to educate the public about consent, sexual offences, legal rights and available remedies. Proper instructions and guidelines should also be provided to parents and guardians so that they can educate their children about sexual offences, personal boundaries, consent and how to seek help when required.

F. Protection of transgender persons:

The legal framework should also properly include transgender persons in provisions relating to sexual offences. The law should provide protection against sexual offences irrespective of the gender identity of the victim or perpetrator. The provisions relating to transgender persons should be properly connected with the penal laws so that they can also receive equal protection and access to justice.

CONCLUSION

The present research concludes that Indian law has undergone significant development in addressing sexual offences, particularly through the criminal law (Amendment) Acts 2013 and 2018 and the subsequent enactment of the BNS, 2023. These developments have expanded the range of prohibited sexual acts, strengthened the concept, enhanced victim protection, and introduced stricter punishment, especially for offences against children. However, the analysis of section 63 of the BNS reveals the offence of rape continues to be defined through a gender specific framework, where the offender is a "man" and the victim is a "woman". This becomes significant because the provision includes acts such as penetration by an object or a part of the body, which are not inherently limited to male offenders. The comparison with POSCO and selected foreign jurisdictions further demonstrates that sexual offences can also be conceptualized through a broader person centered and consent-based framework.

Therefore, the central issue is not merely whether rape law should be made gender neutral, but how Indian law can ensure equal and effective protection to all victims while retaining appropriate gender sensitive safeguards for women and children. A balanced approach based on consent, bodily autonomy, equality, dignity and the nature of the sexual act may provide a more comprehensive framework for addressing sexual violence. The gender specific formulation of rape under sec 63 BNS as an important area for further legislative, judicial and comparative consideration.

In the final analysis, the true strength of rape law lies not merely in the severity of punishment, but in its ability to recognize every individual's rights to bodily autonomy, dignity and freedom from non-consensual sexual violence. As society and the understanding of sexual violence continue to evolve, the law must also evolve to address forms of victimization that may fall outside traditional gender-based assumptions. A more inclusive and consent centered approach can therefore contribute towards a criminal justice system that is not principles of equality, dignity and justice for all.

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