

Need For Gender-Neutral Rape Laws: A Comparative Analysis Post-Section 377 Repeal in The Bharatiya Nyaya Sanhita, 2023

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Abstract

In India, whilst the gender roles are deep-rooted in the society, the definition of rape under the law fails to capture the full spectrum of sexual violence. The present legal structure, rooted in a binary understanding of gender, leaves many survivors, including men, transgender, and non-binary individuals without adequate legal recourse. The need for gender-neutral rape laws in India has become increasingly urgent as the current legal framework, including Bharatiya Nyaya Sanhita, 2023 remains predominantly focused on women as victims, thereby excluding male, transgender, and non-binary individuals from protection against sexual violence. This exclusion perpetuates stigma, underreporting, and systemic inequities, leaving many victims without access to justice. Drawing on comparative analyses of international frameworks such as those in the United States, the United Kingdom, and Canada, the study underscores the importance of inclusive legal definitions that address the complexities of sexual violence and its impact on all individuals. By advocating for the redefinition of legal terms, public awareness initiatives, and stronger enforcement mechanisms, this research calls for a transformative shift in India's approach to addressing sexual violence, ensuring justice and dignity for all victims regardless of their gender identity. The research employs a doctrinal methodology, analyzing legal texts, statutes, and case law to assess the existing rape laws in India. It also includes a comparative study of gender-neutral rape laws in other countries to propose legal reforms for greater inclusivity.

Keywords: *Gender-neutral rape laws, sexual violence, constitutional equality, male victims, transgender rights, inclusivity, socio-cultural, non-binary individuals, sexual violence stigma.*

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1. Introduction

In recent years, India has witnessed significant changes in its legal framework, particularly concerning the protection of individuals from sexual violence. One of the most pivotal moments in this transformation came after the horrific 2012 gang rape in Delhi, a crime that shocked the nation and drew widespread international condemnation. This tragedy ignited a national outcry and led to a renewed focus on strengthening the country's laws related to sexual offences, particularly the offence of rape. The aftermath of this incident led to the formation of the Justice Verma Committee, which made a series of recommendations aimed at broadening the legal definition of rape and enhancing the protection and justice for survivors of sexual violence. Among these reforms, the Criminal Law (Amendment) Act of 2013 was passed, significantly revising the provisions of Section 375 of the Indian Penal Code (IPC), 1860 to include a wider array of sexual offences. Despite these legislative advancements, however, the reforms remained gender-specific, largely focusing on women as the sole victims of sexual violence. This has sparked ongoing debates regarding the need for a more inclusive, gender-neutral approach to rape laws in India, an issue that has gained increasing attention in recent years.¹

The recently enacted Bharatiya Nyaya Sanhita (BNS) Act, 2023, replacing the IPC, 1860, represents a significant overhaul of India's sexual offence laws. Notably, it updates Section 375 of the IPC to Section 63, introducing stricter penalties. This change reflects a commitment to addressing sexual violence more severely and recognizing the rights of victims. However, the BNS, 2023 retains a gender-specific approach, similar to its predecessor, which limits its protections. By focusing primarily on women as victims, the law fails to adequately protect male, transgender, and non-binary survivors of sexual abuse. This absence of gender-neutral provisions highlights a continuing disparity in legal protections, leaving certain groups vulnerable to underreporting and injustice. Advocates argue that gender-neutral rape laws are crucial for ensuring equitable justice for all individuals, irrespective of gender

1 Manupatra, "Articles – Manupatra" *available at*: <https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India> (last visited December 12, 2024).

identity and that further reforms are necessary to address these gaps in India's legal system.²

One of the most glaring gaps in the Bharatiya Nyaya Sanhita, 2023 is its gendered definition of rape, which fundamentally alters the dynamics of legal protection. Under the erstwhile IPC, 1860, Section 375 delineated that a man can commit rape against a woman, but it also implicitly recognised male victims through the provisions of Section 377. By contrast, the BNS, 2023 confines the crime of rape to male perpetrators and female victims, thereby excluding male victims from the legal framework. Critics argue that this change not only undermines the rights of male victims but also perpetuates the stigma surrounding male sexual victimization, which is often dismissed or trivialized in societal discourse.³

The concept of gender-neutral rape laws is rooted in the belief that sexual violence can affect individuals of all gender identities, including men, transgender people, and non-binary individuals. The legal framework in India, however, has primarily addressed rape as a crime perpetrated by men against women, reinforcing traditional gender roles and stereotypes.

1.1. Objectives Of the Study

1. To Analyze the Gaps in India's Existing Rape Laws.
2. To Evaluate the Global Practices and Gender-Neutral Rape Laws in Other Countries.
3. To Propose Reforms for Gender-Neutral Rape Laws in India.

1.2. Research Methodology

The research methodology used in this study is doctrinal, which involves a detailed analysis of existing legal texts, statutes, case laws, and legal principles. The study primarily focuses on examining the provisions of the Indian Penal Code, 1860 the Bharatiya Nyaya Sanhita, 2023 and other relevant legislative documents related to rape laws in India.

2 "Amendments in Rape Laws," Drishti Judiciary *available at*: <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/amendments-in-rape-laws> (last visited December 12, 2024).

3 Saksham Agrawal, "Gender-Neutral Rape Laws in India: Limitations of the BNS - LHSS Collective" LHSS Collective -, 2024 *available at*: <https://lhsscollective.in/gender-neutral-rape-laws-in-india-limitations-of-the-bns/> (last visited October 25, 2024).

Additionally, a comparative approach is adopted to analyze gender-neutral rape laws in different countries, such as the United States, the United Kingdom, and Canada, to understand how these jurisdictions have addressed gender inclusivity in their legal frameworks.

2. Constitutional Provisions and Gender Equality

2.1 Constitutional Framework of India

The Constitution of India, adopted in 1950, serves as the supreme law of the land and lays the foundation for the legal framework governing the rights and duties of citizens. It is a document designed to uphold the principles of justice, liberty, and equality for all individuals, irrespective of gender, caste, religion, or race. The Constitution is based on the idea of a democratic republic, where all citizens are treated equally before the law. The framers of the Constitution were influenced by global human rights principles and sought to create a legal structure that would protect all, particularly marginalized and vulnerable groups. The Constitution recognizes the inherent dignity of individuals and seeks to protect their rights, ensuring a fair and just society. Specific provisions within the Constitution, especially in Part III, provide a framework for fundamental rights, which include rights related to equality, freedom of speech, and protection from discrimination, all of which play a vital role in advancing gender equality.⁴

2.2 Right to Equality (Articles 14, 15, 21)

Articles 14, 15, and 21 of the Constitution enshrine the right to equality. Together, they form a robust framework for ensuring equal treatment under the law.

Article 14 guarantees equality before the law and equal protection of the law. It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. This provision is foundational in ensuring that no individual or group is treated unfairly by the state or in matters of law. The inclusion of "sex" as a protected category under this article is a crucial

4 "Fundamental Rights Available to Citizens and Non-Citizens," Drishti Judiciary *available at*: <https://www.drishtijudiciary.com/to-the-point/ttp-constitution-of-india/fundamental-rights-available-to-citizens-and-non-citizens> (last visited December 12, 2024).

step toward ensuring gender equality, though its application has been historically gender-biased in the context of sexual offences.

Article 15 further reinforces the principles of equality by prohibiting discrimination by the state on grounds of religion, race, caste, sex, or place of birth. It is significant for the protection of gender equality, particularly concerning laws that differentiate between men and women in cases of personal rights and freedoms. The provision allows for affirmative action and special provisions for women, children, and other disadvantaged groups, though it also raises concerns about the limitations of gender-specific laws, particularly in the context of sexual violence.

Article 21 guarantees the protection of life and personal liberty, which has been interpreted by the judiciary to include the right to live with dignity and the right to personal security. It has been used to advance gender justice in various rulings, ensuring that the fundamental right to life encompasses the protection of individuals from gender-based violence, including rape and sexual assault. Article 21 has been instrumental in extending the scope of human rights protections, providing a strong legal foundation for advocating gender-neutral laws that aim to protect all victims of sexual violence.

3. Evolution of Rape Laws In India

3.1 Historical Overview of Rape Laws in India

Rape laws in India have evolved significantly over the centuries, reflecting the changing social, cultural, and legal landscapes of the country. In pre-colonial India, the concept of rape was largely understood in terms of property rights and honour, with little regard for the victim's autonomy or rights. The British colonial era introduced the Indian Penal Code in 1860, which for the first time provided a codified legal definition of rape. Under Section 375 of the IPC, rape was primarily defined as an act of sexual intercourse with a woman without her consent, which could be committed by a man against a woman.⁵

5 Pamini Kasera, "A Historical Analysis of Rape Laws in India" *available at*: https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3619807_code4205748.pdf?abstractid=3619807&mirid=1 (last visited December 12, 2024).

The laws governing rape in India remained largely unchanged for over a century. While the IPC addressed rape in terms of the protection of women's honour and chastity, it ignored issues of consent and the broader socio-cultural factors that contribute to sexual violence. This gendered approach led to the exclusion of male, transgender, and non-binary victims from legal protections, limiting the scope of justice in cases of sexual assault. Furthermore, the lack of clarity on issues like marital rape and the minimal punishment for certain offences highlighted the need for reform in the system. The Indian Penal Code, 1860 was replaced by the Bharatiya Nyaya Sanhita in 2023. The erstwhile section 375 of IPC, 1860 that dealt with rape was transformed to section 63 under the BNS, 2023. However, the provision remained the same and there was no change towards gender neutrality.

3.2 Legal Definition of Rape in India

The legal definition of rape in India has undergone significant changes, particularly following the 2012 Delhi gang rape incident that sparked nationwide protests and demands for stronger laws. Before the 2013 Criminal Law (Amendment) Act, the definition of rape under Section 375 of the IPC was narrow and restricted to penetration by a man into a woman's body. The amendments introduced in 2013 expanded this definition to include a broader range of sexual offences, such as acts involving digital penetration, insertion of foreign objects, and other non-consensual acts. This was a crucial step in recognizing that rape is not limited to traditional forms of sexual intercourse but encompasses various forms of sexual violence.

However, despite these amendments, the legal definition of rape in India remains gender-specific. Section 63 of the BNS, 2023 continues to define rape as an act committed by a man against a woman. This exclusion of male, transgender, and non-binary individuals as potential victims of rape creates a significant gap in legal protection. In addition, the law continues to exclude marital rape from its scope, except in cases where the wife is under the age of 15. This restriction has led to calls for reform to ensure that all individuals, regardless of gender, are equally protected under the law.

3.3 The Need for Reform in Rape Laws

The need for reform in India's rape laws has been a subject of intense debate, especially following high-profile cases of sexual violence. While the 2013 amendments to the Criminal Law were a step in the right direction, there remains a significant gap in the legal framework concerning the protection of male, transgender, and non-binary victims of sexual assault, even after the introduction of the new Bharatiya Nyaya Sanhita, 2023, as there is no provision under the BNS, 2023, protecting their bodily rights. The existing laws are built on a gendered framework that fails to account for the diverse experiences of individuals who face sexual violence. As a result, many victims find themselves excluded from the legal protections afforded to women, leading to underreporting of cases and a lack of justice for survivors.⁶

There is a growing consensus that the legal system must evolve to include provisions that protect all genders from sexual violence and to recognize marital rape as a crime in all circumstances. A more inclusive, gender-neutral legal framework would ensure that survivors of sexual violence, regardless of gender, have equal access to justice and protection.

3.4. Gap in male law after removal of Section 377 in Bharatiya Nyaya Sanhita, 2023

The introduction of the Bharatiya Nyaya Sanhita, 2023 marks a significant shift in India's legal framework regarding sexual offences, particularly in light of the repeal of Section 377 of the Indian Penal Code, 1860. This development raises critical concerns about the protection of male victims of sexual assault. Historically, Section 377 provided legal safeguards for non-minor males, categorizing certain non-consensual acts as rape and protecting them from sexual violence. However, with its removal from the proposed BNS, there is a palpable fear that male victims could find themselves bereft of adequate legal recourse.

6 Lalit Sharma Bharatiya and English Literature, "Addressing India's Rape Issue: A Comprehensive Analysis of Legal Frameworks, Socio-Cultural Challenges,..." unknown, 2024 *available at*: https://www.researchgate.net/publication/383424858_Addressing_India's_Rape_Issue_A_Comprehensive_Analysis_of_Legal_Frameworks_Socio-Cultural_Challenges_and_Enforcement_Mechanisms (last visited December 12, 2024).

One of the most glaring gaps in the IPC, 1860 was its gendered definition of rape, which fundamentally altered the dynamics of legal protection. Under this law, Section 375 clearly delineated that a man can commit rape against a woman, but it also implicitly recognized male victims through the provisions of Section 377. By contrast, the BNS, 2023 confines the crime of rape to male perpetrators and female victims, thereby excluding male victims from the legal framework. Critics argue that this change not only undermines the rights of male victims but also perpetuates the stigma surrounding male sexual victimization, which is often dismissed or trivialized in societal discourse.⁷

The consequences of this legislative shift are far-reaching. The BNS, 2023 inadvertently signals to male victims that their experiences are less valid or deserving of protection under the law. This perception can deter victims from reporting crimes, further entrenching the cycle of silence and shame that often accompanies male victimization. Moreover, the absence of legal provisions addressing male sexual violence could leave many victims without any form of recourse, as the existing avenues for seeking justice may become less accessible or entirely unavailable.⁸

The debate surrounding the BNS, 2023 and its implications for male victims underscores the need for a comprehensive review of the criminal justice system in India. Legal reforms must prioritize inclusivity and protection for all victims of sexual violence, regardless of gender. This can be achieved by adopting a more nuanced understanding of consent, victimhood, and the complexities of sexual violence. Additionally, societal attitudes must be challenged through awareness campaigns that educate individuals about the realities of male and transgender victimization, fostering an environment that encourages reporting and supports recovery.

The enactment of the Bharatiya Nyaya Sanhita, 2023, significantly undermines the legal protections available to male victims of sexual

7 Saksham Agrawal, "Gender-Neutral Rape Laws in India: Limitations of the BNS - LHSS Collective" LHSS Collective -, 2024 *available at*: <https://lhsscollective.in/gender-neutral-rape-laws-in-india-limitations-of-the-bns/> (last visited October 25, 2024).

8 Oommen C. Kurian, "Gender attitudes in India: Changes in the 21st century" OBSERVER RESEARCH FOUNDATION (ORF), 7 March 2024.

assault in India. The removal of Section 377, combined with the gendered definition of rape in the proposed BNS, 2023 signals a regression in the recognition of male victimization within the criminal justice system. It is essential that lawmakers consider the implications of these changes carefully and strive for a legal framework that is inclusive, equitable, and reflective of the realities faced by all victims of sexual violence.

4. REPORT OF 172nd LAW COMMISSION AND JUSTICE VERMA COMMITTEE REPORT

4.1 REPORT OF 172nd LAW COMMISSION

This report made significant recommendations to reform the Indian Penal Code, 1860 particularly concerning sexual offences such as rape.

- The Law Commission proposed broadening the definition of rape so that it was no longer based on the assumption that only women can be victims. It recognized that rape and other sexual offenses can occur to any person, including men, transgender individuals, and non-binary persons.
- Inclusion of Male Victims: The report recommended that the law should be gender-neutral, meaning that men who are victims of rape or sexual violence should also be recognized under the law. This was a critical step in addressing the fact that sexual violence affects individuals of all genders, even though historically, rape laws have primarily been framed in the context of female victims.

4.2.1. Background of the Justice Verma Committee

The Justice Verma Committee was established in December 2012 in response to the brutal gang rape of a young woman in Delhi, which led to widespread protests and demands for reforms in India's laws related to sexual violence. The committee was tasked with reviewing the existing legal provisions and suggesting reforms to address the inadequacies in the law. Headed by former Chief Justice of India, Justice J.S. Verma, the committee comprised legal experts, academics, and social activists. Its primary objective was to recommend changes to the criminal justice system to make it more effective in dealing with sexual violence cases, ensuring swift justice, and providing better protection for victims.

The committee's report, submitted in January 2013, was widely hailed for its comprehensive recommendations, which addressed various aspects of sexual violence, including the definition of rape, the

punishment for offenders, and the rights of victims. It also recognized the need for changes in societal attitudes towards women and called for a broader understanding of gender equality in the legal system.⁹

4.2.2. Key Recommendations on Rape Laws

One of the most significant recommendations of the Justice Verma Committee was the broadening of the definition of rape. The committee suggested that the definition should not be limited to penile penetration but should encompass other forms of sexual violence, including digital penetration and other non-consensual sexual acts. This recommendation was reflected in the 2013 Criminal Law (Amendment) Act, which expanded the legal understanding of rape to include a wider range of sexual offences. Additionally, the committee recommended that the law should be gender-neutral, recognizing that men, transgender individuals, and non-binary people can also be victims of sexual violence. The committee also suggested that marital rape should be criminalized, arguing that consent within marriage should be treated with the same legal respect as any other relationship. These recommendations were aimed at addressing the gaps in the existing law and ensuring that the criminal justice system would provide comprehensive protection to all victims of sexual violence.¹⁰

5. Comparative Analysis of Gender-Neutral Rape Laws In Other Countries

5.1 Gender-Neutral Rape Laws in the United States

The United States has made significant strides in developing gender-neutral rape laws, recognizing that sexual assault can occur regardless of the victim's gender. Under U.S. federal law, specifically the **Violence Against Women Act, 1993**, the definition of rape was broadened to cover non-consensual sexual acts, including penetration with any object, by anyone, regardless of the victim's gender. This progressive shift reflects a

9 “Committee Reports,” PRS Legislative Research *available at*: <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> (last visited December 12, 2024).

10 “The Justice Verma Committee Report 2013: A Comprehensive Analysis of Legal Reforms in India,” *available at*: <https://www.legalserviceindia.com/legal/article-17870-the-justice-verma-committee-report-2013-a-comprehensive-analysis-of-legal-reforms-in-india.html> (last visited December 12, 2024).

growing recognition that men, women, transgender, and non-binary individuals can all be victims of sexual violence.

Additionally, U.S. states have adopted their variations of rape and sexual assault laws. Many states have amended their statutes to reflect gender-neutral language and to ensure that sexual violence is prosecuted effectively without discrimination based on the victim's gender. For example, Section 261 of the **California Penal Code** defines rape as "*an act of sexual intercourse with a person without their consent,*" without specifying gender. The inclusion of such provisions makes it clear that sexual assault is not gendered and ensures that all victims receive equal protection under the law.

5.2 Gender-Neutral Rape Laws in the United Kingdom

In the United Kingdom, gender-neutral rape laws are governed by the **Sexual Offences Act 2003**, which was a landmark piece of legislation that updated and expanded the legal framework surrounding sexual violence. This law replaced the old offence of rape, which previously applied only to women, and broadened it to apply to both male and female victims. Under the Sexual Offences Act, 2003 rape is defined as the penetration of any body part or object into another person's body without their consent, irrespective of the gender of the victim or the perpetrator.¹¹ The law further emphasizes consent as the central element of the crime, making it clear that a lack of consent is what constitutes rape rather than focusing on the gender of the participants. This recognition of both male and female victims has been instrumental in challenging the traditional gender norms surrounding sexual violence. Additionally, the UK legal system allows victims, regardless of gender, to report cases of rape and sexual assault without facing stigma or disbelief, encouraging a more inclusive approach to addressing sexual violence.

5.3 Gender-Neutral Rape Laws in Canada

Canada has also made significant progress in implementing gender-neutral rape laws, with the **Criminal Code of Canada** providing a broad and inclusive definition of sexual assault. Canadian law has long

11 "Rape and Sexual Offences - Chapter 7: Key Legislation and Offences," The Crown Prosecution Service *available at*: <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-7-key-legislation-and-offences> (last visited December 12, 2024).

recognized that both men and women can be victims of sexual assault, and the Criminal Code uses the term "sexual assault" rather than "rape," reflecting a broader understanding of the crime. Under Section 271 of the Criminal Code, a person is guilty of sexual assault if they apply force to another person without their consent, and this applies equally to all individuals, regardless of gender. This definition includes both penetration and other forms of sexual violence, and it specifically removes gendered language from the statute. Furthermore, Canada has developed specific provisions for transgender and non-binary victims, acknowledging the unique challenges they may face when seeking justice in cases of sexual violence. These provisions help to ensure that all victims, regardless of their gender identity, can access legal remedies and support services.

6. Judicial Pronouncements

1. *Michael M. v. Superior Court*¹²: In this case, the US Supreme Court case upheld the constitutionality of a California statutory rape law that only criminalized males for sexual intercourse with a minor female, concluding that such a gender-specific law did not violate the Equal Protection Clause due to the unique biological consequences of pregnancy for females; essentially allowing for different legal treatment based on sex when justified by a significant difference between the genders.

2. *People v. Liberta*¹³: The New York Court of Appeals rejected the claim that a man cannot be raped by a woman, describing it as fundamentally incorrect. The argument was based on the assumption that a man cannot participate in sexual intercourse unless he is sexually aroused, and if aroused, he must be consenting. However, the court clarified that "sexual intercourse" is defined as any penetration, no matter how slight, and does not depend on arousal or consent.

3. *Independent Thought v. Union of India*¹⁴ In this case, the Supreme Court of India struck down the exception to Section 375 of the Indian Penal Code (IPC) that allowed marital rape within the context of marriage where the wife is above the age of 15. The court held that the

12 450 U.S. 464 (1981).

13 474 N.E.2d 567, 577 (N.Y. 1984).

14 (2017) 10 SCC 800.

exception, which exempted husbands from prosecution for sexual intercourse with their wives under the age of 18, was unconstitutional as it violated the constitutional guarantees of equality and non-discrimination. The decision highlighted the importance of protecting women's sexual autonomy, irrespective of marital status, and recognizing the inherent dignity of women in a marital relationship. While this judgment addressed a gender-specific issue, it also opened discussions on the need for more inclusive provisions in sexual violence laws that account for male and transgender victims of sexual assault.

4. *State (NCT of Delhi) v. Pawan Kumar*¹⁵: The infamous Nirbhaya Case (2012) involved the brutal gang rape and murder of a 23-year-old woman in New Delhi, which led to massive public outrage and protests across India. This case brought attention to the inadequacies of India's rape laws, which were widely criticized for being too lenient. In response to the incident, the Indian government formed the **Justice Verma Committee**, which led to significant reforms in rape laws in India, expanding the definition of rape to include acts like penetration with objects and extending the scope of punishable offences related to sexual assault.

5. *Reem v. Union of India*¹⁶: The case challenged the constitutionality of Section 375 of the Indian Penal Code, which limits the definition of rape to instances involving female victims. The petition argued that this provision discriminated against male and transgender victims of sexual violence by denying them the right to legal protection under the same laws. Although the Supreme Court did not make a significant ruling in favor of gender-neutral rape laws in this case, it raised critical questions about the need for reform in India's legal system. This case highlighted the gap in the legal framework that fails to provide adequate protection to male and non-binary victims, urging lawmakers and the judiciary to reconsider the gender-specific approach in the context of sexual violence laws.

6. *National Legal Services Authority v. Union of India*¹⁷: In this case, the Supreme Court of India recognized transgender individuals as a

15 (2014) 3 SCC 727.

16 W.P. (C) No. 505 of 2018.

17 (2014) 5 SCC 438.

third gender under the Indian Constitution, affirming their right to equality and non-discrimination. Although this case did not directly address sexual violence, it was significant in the broader context of gender-neutral rape laws. The judgment laid the foundation for advocating for the rights of transgender individuals in all legal matters, including sexual assault cases. The ruling emphasized the need for legal reforms that recognize the unique vulnerabilities of transgender individuals, ensuring their access to justice and protection under laws that are inclusive of all gender identities.

7. *Shakti Vahini v. Union of India*¹⁸ In the case, the Supreme Court dealt with the issue of forced marriages and trafficking of women, focusing on the protection of individuals from sexual violence. While the case centred on women's rights, it also discussed the broader implications of sexual violence, including the protection of all victims regardless of gender. This case underscored the importance of expanding the legal framework for sexual assault to cover both men and transgender individuals, reflecting the growing understanding of sexual violence as a universal issue. It highlighted the need for reforms in India's legal system to recognize and address the needs of all survivors, regardless of their gender identity.

8. *Pooja Sharma v. Union of India and Anr*¹⁹. The Supreme Court chose not to entertain a Public Interest Litigation (PIL) that sought the inclusion of sexual offences against males, transgender individuals, and animals within the provisions of the newly introduced Bharatiya Nyaya Sanhita (BNS). The BNS, which replaces the Indian Penal Code (IPC), is intended to update and reform India's criminal justice system. The Court's decision not to take action in the matter reflects the challenges of addressing such issues through judicial intervention and emphasizes the importance of legislative reforms to ensure that all affected parties.

9. Conclusion

In conclusion, the discussion surrounding gender-neutral rape laws in India reveals a complex intersection of legal, social, and cultural challenges that must be addressed for the country's legal system to evolve and offer equitable justice for all victims of sexual violence.

18 (2018) 7 SCC 8.

19 W.P.(Crl.) No. 398/2024.

The current gender-specific laws, particularly the definitions of rape under Section 63 of the BNS, 2023 limit the scope of legal protections and fail to reflect the reality of modern societal dynamics where men, transgender, and non-binary individuals are also vulnerable to sexual assault. The exclusion of these groups from legal protections perpetuates a cycle of underreporting, stigma, and injustice, leaving them without adequate recourse. The Justice Verma Committee's recommendations for reforming rape laws, particularly the push for gender-neutral provisions, were an important step forward in recognizing the limitations of the existing framework.

Globally, countries such as the United States, the United Kingdom, Canada, and Australia have adopted gender-neutral rape laws that recognize the victimization of all individuals, regardless of gender. These nations have embraced the understanding that sexual violence transcends gender boundaries and that the law must evolve to reflect the experiences of male, female, and transgender victims. The lessons from these countries emphasize the importance of creating a legal framework that is both inclusive and sensitive to the diverse needs of survivors.

Socio-cultural barriers, deeply rooted gender stereotypes, and the stigma surrounding male and transgender victims of sexual violence continue to hinder progress. Legal and institutional challenges, including a lack of adequate training for law enforcement and judicial officers, further complicate the issue. The political climate and public perception of sexual violence, which often reinforces traditional gender roles, must also be addressed to foster an environment where all victims feel safe coming forward to report crimes without fear of discrimination or disbelief.

10. Suggestions/Limitations

1. The path toward implementing gender-neutral rape laws in India presents several opportunities for reform but also faces notable limitations. One of the key suggestions is the urgent need for a comprehensive revision of Section 63 of the BNS, 2023 to include male, transgender, and non-binary victims. The law must be updated to reflect the diverse experiences of sexual violence survivors, ensuring that all genders are equally protected under the legal framework.

2. A gender-neutral definition of rape would promote a more inclusive approach to justice and ensure that all survivors, regardless of their gender identity, have access to legal recourse. Additionally, legal reforms must be accompanied by extensive training for law enforcement, judicial officers, and medical professionals to ensure that they are equipped to handle cases of sexual violence in a gender-sensitive and inclusive manner. Public education on the realities of sexual violence across all genders can help challenge deeply ingrained societal attitudes that perpetuate victim-blaming and silence victims. Awareness programs should also educate the public on the importance of gender-neutral laws in fostering a just and inclusive society. However, there are limitations to the implementation of gender-neutral rape laws in India.

3. Socio-cultural resistance to recognizing the victimization of men and transgender individuals may hinder legislative change. Additionally, political challenges and the reluctance to alter deeply entrenched gender norms could slow down the pace of reform. Despite these limitations, the push for gender-neutral laws remains crucial for ensuring that India's legal system evolves to provide equitable justice for all sexual violence survivors.