
FROM 'WOMAN' TO 'PERSON': REASSESSING GENDER-NEUTRAL RAPE LAWS UNDER SECTION 63 OF THE BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

The enactment of the Bharatiya Nyaya Sanhita, 2023 introduces a significant reform of India's Criminal Justice system by replacing the Indian Penal Code, 1860. However, despite these changes, Section 63 of the BNS continues to define rape in gender-specific terms, considering only a woman as the victim and a man as the perpetrator. This approach omits male and non-binary victims of non-consensual penetrative sexual acts from the legal definition of rape, thus creating a gap in the protection guaranteed under criminal law.

This article assesses whether the continued existence of gender-specific rape laws is compatible with constitutional principles of equality, dignity, and non-discrimination under Articles 14, 15, and 21 of the Constitution of India. It assesses the legal and practical implications of excluding victims of diverse gender identities and evaluates the need for a gender-neutral legislative framework. The article further undertakes a comparative study of selected jurisdictions, particularly the United Kingdom and Canada, where gender-neutral rape or sexual assault laws have been adopted to provide equal legal protection to all persons.

The study argues that gender neutrality does not diminish the protection available to women but expands the scope of justice by recognising that persons of every gender may be victims or perpetrators of sexual violence. It concludes by recommending suitable legislative reforms to Section 63 of the BNS that balance victim protection, due process, and constitutional values while ensuring an inclusive criminal justice system in India.

Keywords : Gender – Neutral Rape Laws, Section 63 BNS , Sexual Offences , Consent, Legal Reform.

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INTRODUCTION

Indian laws have traditionally considered women the primary subjected to rape and men the sole individuals responsible for the offence. The country's legislative framework mainly focuses on women as victims in rape cases. From the Indian Penal Code of (IPC) 1860 to the Bharatiya Nyaya Sanhita (BNS) of 2023 gender-specific provisions has been copied from IPC definition of rape. Although there has been increase in sexual violence against men and persons of diverse gender identities, the existing legal system continues to fall short in ensuring comprehensive legal protection which requires immediate action.¹ When sexual act is committed against men-particularly by men, there is no specific legal provision under the general penal law to address it. The growing discussion around gender rights proves the requirement for a gender-neutral legal system that protects all people equally without regard for their gender identity.²

UNDERSTANDING SECTION 63 OF THE BNS, 2023

The language of Section 63 of BNS clearly shows that "a man" said commit "rape" if he - 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.³ The language of Section 63 makes it clear that only a man can be charged for the offence of rape and only a woman can be considered as its victim. Thus, without consent acts of sexual penetration committed against men or persons of other gender identities do not fall within the definition of rape under the BNS. In *Sakshi v. Union of India*⁴, the petitioner contended that the statutory definition of rape should be broadened to encompass all victim, irrespective of gender. The Court rejected this plea, upholding the constrained definition of rape under Section 375 IPC. Although the case addressed broader issues of sexual violence, it confined legal protection to women leaving male victims outside the ambit of the law.⁵ However Judiciary brought reform in **Navtej Singh**

¹ Gupta, A., Male Survivors of Rape in India: A Study of the Barriers to Justice, I.L.J., 2018, 78.

² Kumar, R., Bharatiya Nyaya Sanhita and Its Implications for Gender Neutrality in Sexual Offences Laws, 15(4) I.L.R. , 233-254 (2023).

³ The Bharatiya Nyaya Sanhita, 2023, § 63(a).

⁴ *Sakshi v. Union of India*, AIR 2004 SC 3566.

⁵ Samaira Singha, Men Too Get Raped: Addressing Male Rape under Indian Law and a Comparative Analysis with Foreign Jurisdictions, YourLawArticle (Jul. 10, 2026, 15:56 PM), <https://www.yourlawarticle.com/post/men-too-get-raped-addressing-male-rape-under-indian-law-and-a-comparative-analysis-with-foreign-jur>.

Johar v. Union of India⁶, landmark case decriminalized consensual homosexual relationships under Section 377 IPC. The court concluded that Section 377 continued to apply to non-consensual same-sex acts. However, the ruling did not equate male rape with the definition of rape under Section 375 IPC, maintaining the exclusion of men from the legal definition of rape. The case is significant because it highlights the continued application of Section 377 to address male sexual violence, albeit inadequately.⁷

WHY THE DEBATE ON GENDER NEUTRALITY MATTERS?

Rape is a heinous offence against physical integrity, self-respect and personal liberty, also is a constitute serious form of sexual violence that inflict enduring physical injury, trauma, pain, depression. While women continue to constitute the most reported rape case victims in India, this should not be interpreted to mean that the possibility that men and persons of diverse gender identities may also become victims of non-consensual penetrative sexual violence. Therefor criminal justice system should focus on the absence of consent rather than the gender of the victim or offender.

Equal legal protection is the simple reorganization of reality men may also be subjected to the same or substantially similar acts as those endured by women. Male rape is a widespread yet underreported form to be treat as aberration. In the absence of gender - impartial law, the denial of justice to men as a victim is more widespread than is commonly considered. Similarly, on July 2019 KTS Tulsi, a senior lawyer and member of parliament in the Rajya Sabha also brought a gender – neutral (Criminal law Amendment bill, 2019) before parliament to make the rape laws gender – neutral in India. As per make the rape laws gender – neutral in India. As per him, Law must maintain a fair balance rights and interests; that balance has been undermined. The law governing sexual offences should adopt a gender-neutral approach. Men, women and other genders can be predators and, women and others needs to be protected.⁸

⁶ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

⁷ Samaira Singha, Men Too Get Raped: Addressing Male Rape under Indian Law and a Comparative Analysis with Foreign Jurisdictions, YourLawArticle (Jul. 10, 2026, 15:56 PM), <https://www.yourlawarticle.com/post/men-too-get-raped-addressing-male-rape-under-indian-law-and-a-comparative-analysis-with-foreign-jur>.

⁸ Abhinav Jaju, Male Rapes Silent Victim and Gender of Listener, Record of Law (Jul. 10, 2026, 16:38 PM), https://recordoflaw.in/male-rapes-silent-victim-and-gender-of-listener/#_ftn8.

COMPARATIVE ANALYSIS WITH OTHER COUNTRIES LAW

1. United Kingdom: A person (A) commits an offence if—
 - (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.⁹

2. Australia: A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator sexually penetrates another person without the consent of that person; and
- (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.¹⁰

The comparative analysis demonstrates that several common-law jurisdictions have moved towards considering victims of sexual acts irrespective of gender. While the United Kingdom and Australian jurisdictions adopt gender inclusive approaches that focus primarily on the absence of consent, Section 63 of the Bharatiya Nyaya Sanhita, 2023 continues to consider only a woman as the victim of rape and a man as the perpetrator. This comparison highlights the need to reconsider whether India's rape law should evolve from a gender specific framework to a more inclusive, gender-neutral model while ensuring adequate protection for women and other vulnerable groups.

CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 represents a comprehensive revision of India's criminal laws; however, Section 63 continues to retain the gender-specific framework of the erstwhile

⁹ Sexual Offences Act, 2003, §1, (UK).

¹⁰ Criminal Code Act, 1955, Schedule, Division 268.14, (Australia).

Section 375 of the Indian Penal Code by considering only a woman as the victim of rape and a man as its perpetrator. In contrast, several common-law jurisdictions have adopted more inclusive approaches that extend legal protection to victims irrespective of gender, while continuing to safeguard vulnerable groups.

The exclusion of male and other gender-diverse victims from the definition of rape raises important questions regarding equality, dignity, and access to justice under Articles 14 and 21 of the Constitution of India. Although women continue to constitute the overwhelming majority of rape victims and therefore require strong legal protection, this should not prevent the law from considering that persons of other genders can also suffer comparable forms of sexual acts.

A carefully drafted gender-neutral definition of rape—accompanied by appropriate procedural safeguards against misuse—would enable the criminal justice system to protect all victims without diluting the protections available to women. Replacing the gender-specific terms "man" and "woman" with gender-inclusive terminology such as "person", wherever appropriate, would better reflect the constitutional values of equality, dignity, and equal protection of the laws. The debate is therefore not about reducing safeguards for women but about ensuring that every victim of non-consensual sexual violence receives equal recognition and protection under the law.