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GENDER NEUTRALITY IN SEXUAL OFFENCES **UNDER THE BHARATIYA NYAYA SANHITA, 2023:** **AN ANALYSIS**

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ABSTRACT

The sexual offences laws in India have evolved significantly since the implementation of the Indian Penal Code, 1860. Social values, judicial engagement, and global human rights norms exhibited the need to create a legal regime that is more inclusive and progressive. The introduction of the BNS, 2023 represents a turning point in anticipation of a new chapter in Indian criminal law, specifically, in the treatment and understanding of sexual offences. The term paper “Gender Neutrality in Sexual Offences under the BNS, 2023” examines the non-legal shift from gendered protection under the IPC to a new framework much closer to gender-neutrality under the BNS. As sexual offences impact victims who identify, or can identify as, multiple genders, this move toward gender-neutrality has the potential to be transformative for India’s criminal justice system. This change also invites challenges that call for practice-based, academic engagement, from practical responses to interpretive and socio-cultural issues. The examination of the evolution of sexual offences legislation will identify what sexual offence provisions used to look like. The paper will consider important reforms and changes made in comparison to the IPC under the BNS and these reforms will then be analysed to consider an appropriate level of responsiveness. Judicial positions will also be examined in order to understand the method of future prospective jurisprudence. The complexity of gender neutrality will be addressed in terms of behaviour, societal perceptions and the dynamics of law enforcement. The study utilizes a doctrinal and analytical methodology, supported by an investigation of statutes, case laws, reports, academic literature, and comparative international practice. While the study is primarily concerned with Sections 63 to 70 of the BNS 2023, discussions are supplemented with wider considerations for effective implementation of gender-neutral sexual offence laws. This study intends to contribute to the existing debates or scholarship on criminal law reform in India and emphasise the need for inclusive legal protection of individuals. The author hope that the scholarly analysis and recommendations in this study will support further academic research and policy deliberation in this important and

sensitive field of legal research.

1. INTRODUCTION

Sexual violence in India is an ongoing human rights violation. Sexual violence violates bodily autonomy, privacy, dignity and personal liberty, all of which are recognized as fundamental rights under Articles 14, 15, and 21 of the Constitution. The Indian Penal Code, 1860 historically represented sexual offenses through a patriarchal lens and defined women as victims and men as offenders. The codes that were historically rooted in stereotypes about gender, sexuality, and norms of behavior have become outdated in recent social realities; courts, scholars, activists, and global institutions have questioned this binary system. The Supreme Court of India has extended constitutional protections relating to gender and sexual autonomy. The 2012 Nirbhaya case, the Justice J.S. Verma Committee recommendations, and the Law Commission of India Reports significantly spurred legislative reforms. In response to the 172nd Report (2000)¹, which recommended gender-neutral sexual offences, the Criminal Law (Amendment) Act, 2013 maintained female-centric victimization due to great socio-political pressure. Even the 243rd Law Commission Report (2012)², conceded that male and transgender victims were left unprotected by rape laws, pleading for revision. India finally incorporated sweeping change through the Bharatiya Nyaya Sanhita (BNS), 2023, which supersedes the colonial IPC. The most notable shift incorporated within the BNS is gender-neutral language in several sexual offences in Sections 63-70. This language demonstrates recognition that individuals with varying degrees of gender identity can be placed as a victim of sexual violence in myriad forms. These changes open serious discussions, however. Detractors argue that, by shifting the discussion towards gender neutrality, it might diminish specialized protections for women, who remain the statistically primary victims of sexual crimes in India. Unfortunately, not much of the social and cultural landscape has shifted to foster utilization of the protections afforded to human victims under sexual violence. For example, accusations would stigmatize the survivor, discourage reporting or seek active retaliation, and create barriers should a survivor question criminal prosecution.

In *State of Punjab v. Gurmit Singh*³, the Supreme Court emphasized the importance of safeguarding victims from secondary victimization and victim disbelieving scrutiny in trials⁴.

¹ Law Commission of India, **172nd Report on Review of Rape Laws** (2000).

² Law Commission of India, **243rd Report on Criminal Law Amendments** (2012).

³ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384

There have also been serious questions raised about the ability of the police and criminal justice system in India to sensitively deal with male or transgender victims, which was highlighted in the case *Lillu @ Rajesh v. State of Haryana*⁴ where the Court denounced invasive procedures and old-fashioned methods that stripped the victim of their dignity⁵.

Thus, while the inclusion of gender neutrality provisions with the BNS 2023 represents a significant change, there is still the opportunity for gap erectors to further complicate the now-established Limited Rights system. This study aims to critically examine whether a gender-neutral approach actually ensures substantive equality, or whether numerous legal and equity implementation gaps still exist. The study will assess the evolution of the law, review the changes in statutes/codes, critically assess case law interpretation of statutes/codes relating to gender neutral provisions and examine the intersections and challenges with institutions and victim support services/practice. Ultimately, this study aims to contribute to the existing academic and policy discussions regarding how to achieve an inclusive and rights-stated criminal justice system that can protect everyone from sexual violence.

1.1 Background: Transition from IPC to BNS 2023

The Indian Penal Code, enacted in 1860 and composed under Lord Macaulay's supervision, formed the basis of criminal law in India for more than 160 years. Although legislation was amended many times, its colonial history and conservative perspective often limited the Code's ability to roll out in line with modern-day social realities. It showed limitations when faced with potential criminal activity, relating to recognition of gender identities, understandings of consent, technological advancements, and shifting social attitudes towards sexuality. In 2023, the Indian government introduced many significant reforms in the Indian Penal Code, repealed it with the Bharatiya Nyaya Sanhita (BNS) 2023, along with the changes in the procedural and evidentiary laws. The reforms aimed at de-colonizing the criminal justice system, making legal language more inclusive, improving protections against sexual violence and strengthening the victim-centred justice. One of the biggest changes in the BNS is the attempt to include gender neutral language in some of the provisions on sexual offences, which accept that the trauma of sexual violence does not exclusively affect one gender. This is undoubtedly a paradigm shift in Indian criminal law.

⁴ *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643

1.2 Significance of Gender Neutrality in Sexual Offences

Sexual violence is fundamentally a violation of bodily integrity, dignity, and personal autonomy harms that extend beyond gender. Historically, the IPC cast women solely as victims and men as perpetrators of crimes such as rape. This framework led to a number of problems like male and transgendered victims of sexual abuse had no legal recourse under "rape" laws, Stereotypes about gender very much shaped police and judicial attitudes and Constitutional rights to equality and non-discrimination were compromised. As a result, laws on sexual offences must be gender-neutral in order to assure equality before the law (Article 14), prevent discrimination on grounds of sex (Article 15) and respect the right to life and personal liberty (Article 21). In addition, Indian society is increasingly making space for gender identities and diversity, including LGBTQIA+ identities, so it is imperative that the law reflect current practice. Gender-neutrality promotes inclusion; it addresses victim groups that are often invisible; and it ultimately strengthens the holistic functioning of the criminal justice system.

1.3 Review of Literature

Many literatures exist concerning sexual offence laws in India, especially with respect to the gender protections found in the Indian Penal Code, 1860, and the changes to their meanings through statutory interpretation and legislative change. Early feminist scholars laid the initial groundwork through critiques of the extreme patriarchal and "morality-centered" nature of rape laws under the Indian Penal Code, 1860, which historically conceptualized women as lacking autonomous rights (only as passive victims who needed protecting) rather than simply as rights-bearing entities.⁵ These critiques also underscored that definitions of sexual offences were rooted in antiquated ideas about chastity, honor, and modesty that controlled and constrained conduct by law enforcement and behavior in court. A fresh wave of scholarship was provoked by the Criminal Law (Amendment) Act, 2013, which followed the Justice Verma Committee Report, advocating for the need to reformulate sexual offence provisions, which had been too narrowly focused on acts of penile-vaginal penetration, advocate a non-normative expanded definition of a sexual offence, and endorse a consent-driven framework.⁶ But despite the implications of these changes, the statutory and legal frame continued to construct women as victims and men as perpetrators which did not accommodate and exclude so many victims that have cognizable contemporary claims to victimization, that fall outside of the binaries of

⁵ Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions* (OUP 2011) 56–60; Pratiksha Baxi, "Rape, Gender and Judicial Reform" (2007) 42(33) *EPW* 33.

⁶ *Report of the Committee on Amendments to Criminal Law* (Justice Verma Committee, 2013); Criminal Law (Amendment) Act, 2013

woman-man, victim-perpetrator. Within this wider academic field, Adarsh Mishra and Manthan Sharma contend that argue that principles of constitutional equality under Articles 14 and 15 mandate gender-neutral protection for survivors.⁷ Their doctrinal argument suggests that sexual-offence laws, by their nature, regulate acts and not identities; therefore, gender-based distinctions do not have a rational nexus with the law's purpose. They further point out the inconsistency between the gender-neutral Protection of Children from Sexual Offences Act, 2012 (POCSO) and the gender-based adult rape law, which creates an arbitrary legislative gap for adult male and transgender victims. Moreover, Mishra & Sharma explain that gender neutrality does not necessarily threaten women's safety, but rather has the potential to restore equal access to justice for all genders, provided states implement procedural safeguards, training, and frameworks to prevent misuse.

Complementing this analysis, Seema and Kulvinder utilize a profoundly socio-legal perspective to analyze the lived experience of sexual violence beyond the gender binary.⁸ In their empirical analysis, they report that male, transgender, intersex, and non-binary victims face barriers like stigma, fear of shaming at police stations, a lack of forensic sensitivity, and a lack of institutional support more broadly. The authors contend that simply adopting gendered statutory language itself creates an exclusionary barrier, as law enforcement and medical practitioners will interpret the provisions in a way that precludes the registration of non-female victim's complaints. Their study also examined previous Law Commission of India reports, which were repeated in prior recommendations to introduce gender-neutral language, such as, "any person". However, these recommendations, which continued to be strongly evidenced in favor of an obligation to promote a right to gender neutrality, were omitted from the amendments in 2013.

A more comparative doctrinal approach appears in the work of Mukul, Sargam, and Varnit Goyal. They assess how other jurisdictions with similar criminal-law histories have transitioned successfully to gender-neutral sexual-offence frameworks.⁹ Their study evaluations are of the UK Sexual Offence Act, 2003, the Canadian Criminal Code's consent-

⁷ Adarsh Mishra & Manthan Sharma, "Gender Neutrality: Needs & Practical Enforcement" (14 March 2025) SSRN <https://ssrn.com/abstract=5180698>

⁸ Seema & Kulvinder, "Gender Neutrality in Sexual Offences: Need for Reform in Indian Rape-Laws" (2025) 7(4) *IJFMR* <https://www.ijfmr.com/papers/2025/4/51769.pdf>

⁹ Sargam Mukul & Varnit Goyal, "Gender-Neutral Rape Laws in India" (2025) 8(4) *IJLMH* <https://ijlmh.com/wp-content/uploads/Gender-Neutral-Rape-Laws-in-India.pdf>

based model, and Australia's more expansive statutory definitions, and assert that India's persistent reliance on identity-based constructs is an anomaly within modern criminal law. They counter the argument that gender-neutral laws weaken protections for women by citing empirical data showing that reporting and conviction rates for women did not decline in gender-neutral systems; instead, systemic improvements like specialized police training, rape-shield laws and forensic upgrades help both women and non-traditional victims. Their analysis strongly concludes that gender neutrality is not merely constitutionally mandated but doctrinally sound and internationally consistent. However, some scholars do not see the recent process of legislative reform in India as progressive. Praveen Dixit reviews the *Bharatiya Nyaya Sanhita, 2023*, referring to the statute as a “progressive rewrite in parts, but regressive in its silence.”¹⁰ Dixit notes that despite debates on gender neutrality dominating academic circles, the BNS does not fully embrace neutral terminology in all sexual-offence provisions and retains several gendered structures borrowed from the IPC. He contends that while some of the provisions point toward a modernizing influence, the overall framework does not seem to wish to legislate comprehensively for transgender and non-binary victims, and as the reform does not engage with the requirements for equality in a contemporary context, it is very much an incomplete reform.

In addition to these works, other scholars have put forth deep arguments that deepen academic conversation. Nalini Menon has raised the concern that gender neutrality can sometimes obscure the gendered realities of sexual violence, which disproportionately affect women.¹¹ Menon argues that gender neutrality has to be paired with better procedural safeguards for women in sexual violence cases, such as rape-shield laws and protections from secondary victimization. Ratna Kapur and Mrinal Satish have also argued that gender neutrality does not have to obscure structural inequalities, but rather the law has to structure polices to provide substantive equality, so groups such as women, historically disadvantaged with species-based violence will continue to receive greater protection.¹² These arguments contribute to the intellectual tension within the literature, and they show that gender neutrality is not merely the doctrinal shift, it is a socio-political shift that must be balanced with ground realities.

¹⁰ Praveen Dixit, “Bharatiya Nyaya Sanhita on Sexual Offences: A Progressive Rewrite or Unnatural Regressive Silence” (2025) 10(2) *IP International Journal of Forensic Medicine and Toxicological Sciences* 34–36 <https://ijfmts.com/archive/volume/10/issue/2/article/2396/pdf>.

¹¹ Nalini Menon, “Gender Neutrality in Rape Laws: A Feminist Concern” (2018) 60(2) *Journal of the Indian Law Institute* 245.

¹² Ratna Kapur, *Gender, Alterity and Human Rights* (Elgar 2018); Mrinal Satish, *Discretion, Discrimination and the Rule of Law* (CUP 2016)

Another stream of literature is concerned with policy and institutional failures, especially regarding the limitations of NCRB data on male and transgender victims. Universal stigma and "institutional disbelief" by police at a police station including refusals to record complaints of rape by men or transgender persons are documented by studies conducted by human-rights organizations document, and complaints are frequently deemed "not rape within the meaning of the law."¹³ Scholars contend that statutory reform must be combined with structural change including training frameworks and forensic reform as well as revising evidentiary rules under the Bharatiya Sakshya Adhiniyam, 2023. These writings taken together provide a comprehensive academic basis of understanding on the current discussions. Each of them elucidates the doctrinal inconsistencies, social-legal gaps, and institutional biases that exist within their models of the current legal framework. They also come to a consensus and identify a gap in research- a gap in the absence of academic analysis on the implementation and interpretive potential of the BNS, 2023, including to what extent partly-neutral provisions will affect reporting, policing, prosecution, and judicial interpretation for different genders. In conjunction, the emergence of legal discourse surrounding LGBTQIA+ rights has advocated for recognition of broader gender identities, and the need for a more comprehensive provisions within the ambit of Indian criminal law.

Notwithstanding the increased interest in literatures surrounding the concept of gender neutrality in respect to sexual offences, there are limited number of literatures in existence specific to the Bhartiya Nyaya Sanhita, 2023 and its new gender-neutral provisions for sexual offences. This gap in literatures illustrates a research opportunity which this paper takes up through a doctrinal and socio-legal assessment of the reformed legislative framework.

1.4 Research Problem

The Bharatiya Nyaya Sanhita 2023 only partially incorporates gender-neutrality provisions regarding sexual-offences. It is uncertain if the new reforms achieve substantive equality or only have the appearance of gender-neutrality that fails in practice. Indian criminal law has long been shaped by gendered assumptions under the IPC, and the criminal justice system continues to reflect patriarchal attitudes, institutional bias, and limited sensitivity toward male, transgender, and non-binary victims. Because the BNS is newly enacted, there is little jurisprudence, no empirical evidence, and inadequate clarity on how police, prosecutors, and

¹³ Human Rights Watch, "Breaking the Silence: Male Victims of Sexual Abuse in India" (2019) 12–18.

courts will interpret and implement its gender-neutral language. It is therefore uncertain whether these provisions expand access to justice for all victims or risk diluting the necessary protections traditionally afforded to women, who remain disproportionately affected by sexual violence. This research addresses the gap by examining whether the gender-neutral framework under BNS 2023 can operate effectively within India's existing socio-legal landscape, and whether it can deliver equitable protection without undermining the structural safeguards required for vulnerable groups.

1.5 Research Objectives

This research aims to:

1. Trace the historical and legal development of sexual offence laws in India.
2. Study the introduction and scope of gender neutrality under BNS 2023.
3. Examine key changes by comparing IPC and BNS provisions.
4. Analyse judicial attitudes and likely future interpretations.
5. Identify challenges in enforcement, investigation, and trial procedures.
6. Suggest reforms for strengthening a balanced and equitable legal approach.

1.6 Research Questions

Despite its progressive intent, the gender-neutral framework in Bharatiya Nyaya Sanhita, 2023 raises several of legal and practical questions:

1. Are the definitions sufficiently comprehensive to cover all forms of sexual violence?
2. Are law enforcement officials sufficiently trained to deal with victims and accused persons of all genders?
3. What challenges in interpretation will emerge as a consequence of shifting away from framed definitions that have a well-established jurisprudence under IPC?
4. Whether the provisions of BNS on gender neutrality accomplish substantive equality?

1.7 Research Hypothesis

The current definitions, scope and statutory language of sexual offences in BNS 2023 are insufficient to cover the full range of harms experienced by male, transgender, and non-binary victims, resulting in persistent protection gaps and limited access to justice for these groups.

1.8 Research Methodology

This paper utilizes a doctrinal and analytical research methodology which focuses on the

possible incorporation of neutrality from a gender perspective related to sexual crimes under BNS, 2023. It examines legislative texts, judicial precedents, academic literature and review relevant government reports around BNS, 2023. The BNS, 2023 is analysed against relevant provisions in the Indian Penal Code of 1860, in order to identify changes in law, legal gaps, and opportunities for reform. Primary sources include the text of BNS 2023, Indian Penal Code of 1860, the Constitution, and key Supreme and High Court decisions. Secondary sources include academic books and journal articles, reports of the Law Commission, and credible online databases. A comparative perspective is also applied with respect to international standards such as CEDAW and the Yogyakarta Principles for a global contextualization of reform. Given that, BNS 2023 has only recently been enacted into law, there is a limited number of judicial interpretations so far. Therefore, this research will utilize descriptive, analytical and predictive approaches in the analysis to assess aspects of effectiveness, scope, and practicalities of 'gender-neutral' laws related to sexual offences. This methodology provides a systematic, critical, and comprehensive analysis of the legislative and socio-legal dimensions of the topic.

1.9 Rationale for Selection of the Topic

1. This topic is highly relevant given the recent passage of BNS 2023, which includes some gender-neutral sexual offence provisions.
2. It directly focuses on the significant gap in Indian criminal law as the old legislation recognized majorly only women as victims of sexual crimes.
3. The research allows an analysis of the legal reforms, judicial interpretations, and socio-cultural implications of gender-neutrality prevalent in our society.
4. The study contributes to conversations surrounding inclusive justice, human rights, and law reform in India.

This study hopes to contribute substantively to legal advocacy, literature, and policymaking in inclusive justice.

1.10 Scope and Limitations

The scope of this research is limited to a close evaluation of the sexual offence offences enumerated in Sections 63 to 70 of the Bhartiya Nyaya Sanhita, 2023, and assesses them in terms of structure, substance, and intended impact in the modern context of the Indian criminal justice system. The study also revisits the relevant provisions relying on the Indian Penal Code, 1860 for comparative doctrinal purposes while identifying significant breaks and continuities

with respect to the Indian Penal Code. The study further discusses broader constitutional obligations, apposite judicial interpretations, and international human rights standards, particularly those establishing gender neutrality for a parallel assessment of the practical impact of the reform on the ground. Socio-legal issues including, gender justice, victim protection and misuse, are also incorporated for considering the practical implications of the reforms in issue. Nonetheless, certain limitations form the boundaries of the study. The BNS 2023 statute has been recently enacted and lacks extensive judicial interpretation, resulting in limited case law and empirical evidence to substantiate its real-world effectiveness. Enforcement mechanisms, prosecutorial directions, and societal implications are evolving and therefore long-term assessments are speculative at this stage. Additionally, the study does not consider all classifications of sexual offences addressed in other chapters or secondary statutes which would constrain the study to the provisions addressing sexual offences in the sections specified in the BNS.

2. EVOLUTION OF SEXUAL OFFENCES LAWS IN INDIA

The development of sexual offence laws in India reflects a gradual shift from the narrow, gender-specific framework of the Indian Penal Code, 1860 and towards a wider, rights-based one. Historical laws primarily embedded colonial and patriarchal assumptions about female chastity, acknowledging little about autonomy or consent, and showed little to no concern about the lived experiences of male and transgender victims of sexual violence. The slow but cumulative impact of judicial interpretations, feminist works, Law Commission reports, and general reliance on international human rights instruments, has increasingly filled the normative gaps. This ultimately contributed to a larger, more inclusive, and gender-neutral goal reflected in the Bharatiya Nyaya Sanhita, 2023.

2.1 Sexual Offences under the Indian Penal Code, 1860

The Indian Penal Code of 1860 established the normative baseline criminal law structure in India that included the codification of sexual offenses. Rape constitutes one of the most severe infringements of bodily autonomy and human dignity. Yet, India's legal interpretation of rape is exclusive to a gender binary: a woman is recognized as a victim and a man is recognized as a perpetrator.¹⁴ Sections 375 and 376¹⁵ defined what constituted rape, limiting the offense to

¹⁴ Mukul, Sargam and Varnit Goyal, "Gender-Neutral Rape Laws in India" (2025) Vol 8 Issue 4, *International Journal of Law Management & Humanities (IJLMH)*, available at <https://ijlmh.com/wp-content/uploads/Gender-Neutral-Rape-Laws-in-India.pdf>

¹⁵ Sections 375–376, Indian Penal Code, 1860.

cases of female victim and male perpetrator. Affected by the cultural and social norms of the colonial period, the IPC viewed women primarily as victims who required protection of chastity and modesty, and it did not treat women as autonomous individuals and possessors of rights to bodily integrity. The IPC included provisions, like section 354 (outraging the modesty of a woman) and section 509 (insulting the modesty of a woman)¹⁶, which similarly recognized gender-based protection by criminalizing ill conduct towards women, but didn't fully recognized men and transgender individuals as potential victims.

Over the years, many amendments have been made to expand the scope of the laws relating to sexual offenses. The Criminal Law (Amendment) Act of 2013, conceptualized and introduced new offenses, like acid attacks, stalking, voyeurism, and sexual harassment, and increased penalties for prior sexual offences. While these new provisions ably addressed some contemporary concerns, the limitations of the rape and molestation offense remained femicentric at its core, and many aspects of the reform indicated underlying gender bias. Judicial interpretation of the law at times explored issues of consent and victim protection, but remained constrained by the statute which did not clearly identify or address the wants and needs of male or transgender victims of sexual violence. The Law Commission Report¹⁷ have additionally critiqued the IPC's approach, highlighting the need for definitions that are inclusive of sexual violence against all genders. Scholars have further pointed out how the IPC's limited definitions of sexual offences reflect an emphasis on female chastity and patriarchy, rather than human rights, dignity, or equality, as a matter of individual rights to be respected over societal morality. As a result, the IPC 1860 began the legal categorization of sexual offences, but limitations of the IPC's legal framework regarding sexual offences have become increasingly more evident and necessitated comprehensive reform as part of BNS 2023.

2.2 Judicial Approaches and Interpretations Pre-BNS 2023

Historical judicial explanations of sexual offence laws under the IPC have hugely impacted both the scope and application of the law. While the IPC itself codified sexual offences in a gender-specific texts, the courts often interpreted the fundamental provisions liberally in order to uphold the rule of law, human dignity, and constitutional moralism. In the case of *Sudesh Jhaku v. K.C. Jhaku*¹⁸ case, the court recognized that men who experience sexual assault

¹⁶ Sections 354 and 509, Indian Penal Code, 1860.

¹⁷ The Law Commission of India, 172nd Report on *Review of Rape Laws (2000)*. Law Commission of India, 243rd Report on Criminal Law Amendments (2012).

¹⁸ *Sudesh Jhaku v. K.C. Jhaku*, 1998 Cri LJ 2428.

deserve the same legal protection as women. This case shifted how judges looked at the issue and pushed people to start questioning whether rape laws should still focus on just one gender. In some landmark cases, the judiciary made the same key points with an emphasis on consent, autonomy, and the dignity of the victims.

In *State of Punjab v. Gurmit Singh*¹⁹, the Court emphasized the procedural safeguards necessary to ensure survivors were not victimized again at the time of the investigation and trial. In *Independent Thought v. Union of India*²⁰, the Court examined the statutory exceptions when dealing with sexual assault on a minor, and stated that because of the obligation to protect minors, statute must yield to the important act of protection and not rigid statutory interpretation. In its decision in *Lillu @ Rajesh v. State of Haryana*²¹, the Court said it was important to balance the need to infringe on the victim's privacy and dignity in lieu of a proper inquiry that abuses the victim's trust and dignity. Despite the above collective initiatives, judicial dealings are inherently limited by the textual rigidity and lock-tight wordings of the IPC, male and transgender victims continued to go unrecognized, creating major gaps in legal protections.

Along with this lapse by the courts, legal processes continued to be compromised by belief systems influenced by societal prejudices and patriarchal norms and customs that continued to shape legal mindsets, particularly with lower courts, leading to inconsistent application of the laws. The courts sometimes considered a dynamic approach to legal interpretation and liberal construction to counter this, but overall gender-neutral statutory language was absent and thus a completely comprehensive application of the sexual offence laws was suppressed. Because of underreporting, information about male and transgender victims is very limited, but research shows that non-female victims represent about 10 to 15% of sexual violence reports worldwide. Systemic neglect is illustrated by the National Crime Records Bureau's (NCRB) lack of tracking rape cases involving men or transgender persons.²² This highlighted the need for re-codification, and led the way for the more inclusive approach adopted in BNS 2023.

¹⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

²⁰ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

²¹ *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643

²² Seema and Kulvinder, "Gender Neutrality in Sexual Offences: Need for Reform in Indian Rape-Laws" (July-August 2025) Vol. 7 Issue 4, *International Journal for Multidisciplinary Research (IJFMR)*, available at <https://www.ijfmr.com/papers/2025/4/51769.pdf>

2.3 Law Commission Reports and Reform Recommendations

The Law Commission of India has conducted a thorough and systematic examination of the limitations of IPC provisions on sexual offences and has offered thoughtful and constructive recommendations over several decades. The recommendations reflect the need to advance both substantive and procedural inadequacies especially social changes and inclusion in gender policy. The 42nd Report (1971)²³ recommended a clearer definition of rape and included provisions that protected victims of sexual violence in a more refined way than the earlier version. The 84th Report (1980)²⁴ described a better structure to investigation and trial procedures and sentencing provisions with the aim to provide better deterrence. The 172nd Report in 2000²⁵, cited concerns around the gendered aspects of definitions acknowledging that current provisions did not protect male or transgender victims of sexual violence. This report discussed removal of gendered terms and proposed amendments and changes to in the scope of sexual offences and offer a wider definition, including assault on persons regardless of whether their gender or identity. After the Nirbhaya case, the 243rd Report (2012)²⁶ reshaped the conversation to focus on victim-oriented reforms, was mindful of inclusion, and endorsed a focus on international human rights law. The report focused on practical issues which included training of the police officers, gender-sensitive investigative protocols, and special provisions for vulnerable populations. It also pressed for harmonizing national legislation with international norms, such as CEDAW and UN gender equality standards. The Government of India created Justice Verma Committee (JVC)²⁷ to recommend important reforms to the country's rape laws. One of the major recommendations in the JVC report was expanding the definition of “rape” under Section 375 of IPC, 1860, to go beyond “peno-vaginal” penetration and to include other forms of sexual assault and to have a more expansive definition that could body or other forms of non-peno-vaginal penetration. Importantly, the report additionally noted that it should draft laws to create gender-inclusive or gender-neutral rape laws, recognizing all genders can be raped. These conclusions were incorporated into the Criminal Law (Amendment) Bill, 2013.²⁸ Collectively, these reports laid down an intellectual and legislative basis for the introduction of Bharatiya Nyaya Sanhita in the year 2023, highlighting a shift from merely protecting women, to any survivor of sexual violence securing substantive equality.

²³ Law Commission of India, **42nd Report on Reform of Rape Laws** (1971)

²⁴ Law Commission of India, **84th Report on Rape and Allied Offences** (1980).

²⁵ Law Commission of India, **172nd Report on Review of Rape Laws** (2000).

²⁶ Law Commission of India, **243rd Report on Criminal Law Amendments** (2012).

²⁷ Justice J.S. Verma Committee Report, *Amendments to Criminal Law* (Government of India, 2013)

²⁸ Mishra, Adarsh and Sharma, Manthan, “*Gender Neutrality: Needs & Practical Enforcement*” (March 14, 2025), available at SSRN: <https://ssrn.com/abstract=5180698> or <http://dx.doi.org/10.2139/ssrn.5180698>

2.4 International Perspectives on Gender-Neutral Sexual Offence Laws

There is a global inclination towards having gender-neutral sexual offence laws that align with beliefs in equality, dignity, and human rights. Gender-neutral laws allows all survivors have equal access to justice, regardless of gender. Gender neutrality in law means that legal definitions focus on the violation of bodily autonomy, regardless of whether the survivors or perpetrator are male or female. For example, the Sexual Offences Act, 2003²⁹, in the United Kingdom brought about changes where offences of rape, sexual assault and sexual exploitation can be committed against any victim, regardless of gender. Canada embodies gender neutrality in its Criminal Code, so that laws and penalties for sexual assault and other related offences are equally applicable for everyone, regardless of gender or sex.³⁰ The laws on sexual offences focus on the behavior, rather than the gender or sex of the person. Most states and territories in Australia also have adopted gendered-neutral provisions, indicating that the language used in sexual offence legislation applies to everyone.³¹ There are international instruments that reinforce these legal initiatives such as CEDAW (1979)³², which obligates its signatory states to eliminate discrimination in the legal framework, which also includes protection from sexual violence. The Yogyakarta principles (2007)³³, advocates for legal protection based on gender identity or sexual orientation. The United Nations Human Rights Council (UNHRC) has consistently reaffirmed that gender-neutral sexual offence legislation is essential for raising awareness and protecting human dignity, equality and justice globally.

3. GENDER NEUTRALITY IN SEXUAL OFFENCES UNDER BNS, 2023

The introduction of the Bharatiya Nyaya Sanhita (BNS), 2023 indicates a major shift in the regulatory approach to sexual offences in India. The BNS, which discards the colonial framework of the Indian Penal Code, 1860 (IPC) through its introduction, seeks to rearticulate criminal laws aiming those to be more inclusive and adaptive to different social needs, constitutional mandates, and international legal norms. One of the most important reforms is in the shift to gender neutrality as a criterion for defining some sexual offences, which is directed at providing equal protection of the law to individuals regardless of their gender identity.

²⁹ Sexual Offences Act, 2003 (UK)

³⁰ Criminal Code of Canada, RSC 1985, c C-46.

³¹ Crimes Act 1900 (NSW), Australia.

³² Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

³³ Yogyakarta Principles, 2007.

3.1 Key Sexual Offence Provisions

Chapter V "Of Offences Against Women and Children" in the BNS 2023 contains the legal framework regarding sexual offences under Sections 63-73. Sections 63-70 enumerates the following sexual offences:

- **Section 63. Rape³⁴**

Although *Section 63 of the Bharatiya Nyaya Sanhita 2023* continues to define rape narrowly as an act undertaken by a "man" "against" a "woman," the BNS has, overall, engaged in a limited move towards gender neutrality in sexual offences. The text of Section 63 maintains a binary framework of "man" as a perpetrator and "woman" as a victim, thereby precluding male and transgender victims of penetrative sexual assault from constituting 'rape' under the BNS. Nevertheless, movement towards gender neutrality can be discerned in the new legal architecture, and particularly in other sections of the BNS that deal with sexual assault and exploitation, drafted in gender-neutral terms to protect "any person."

In this respect, while the BNS maintains a gender-based core of rape offences, it does expand the protective regime by recognizing the reality that sexual violence can be perpetrated against individuals of all genders. This movement towards gender-neutral sexual offences in India is nascent but largely incomplete.

- **Section 64. Punishment for rape³⁵**

Section 64 of the Bharatiya Nyaya Sanhita, 2023 refers to the earlier Section 376 of the IPC addressing punishment for rape. It keeps an approach similar to the IPC without major textual distinction in outlining basic and aggravated categories of the offence. Like the IPC, it continues to specify a minimum ten years of rigorous imprisonment, with life imprisonment as the maximum punishment, in addition to fine. Similar to the IPC, the BNS marks out certain circumstances as aggravated when the offender is in authority, trust, or special responsibility such as servants of police, armed forces, hospitals, custodial bodies, relatives, guardians, and teachers. Aggravated cases also include communal violence, pregnancy, mental illness, physical disability, lack of consent, domination over the woman, and bodily harm. The sentence in such cases is elevated to, at a minimum rigorous imprisonment not less than ten years with no upper limit and where the sentence would extend to an offender's natural life. Thus, Section 64 preserves the IPC regime for enhanced punishment in aggravated cases of rape with

³⁴ Bharatiya Nyaya Sanhita, 2023, s. 63. Previously Indian Penal Code, 1860, s. 375.

³⁵ Bharatiya Nyaya Sanhita, 2023, s. 64. Previously Indian Penal Code, 1860, s. 376.

the substantive framing of the victim as a "woman" and therefore reflects the reality that while BNS reorganizes offences, the punishment structure of gendered cases of rape would be materially unchanged.

- **Section 66. Punishment for causing death or persistent vegetative state of victim³⁶**

While Section 66 of the Bharatiya Nyaya Sanhita, 2023, continues to refer to the aggravated punishment framework provided in Section 376A of the Indian Penal Code, it retains a gender-specific element in relation to the category of victimisation it protects. Specifically, this provision defines the conduct of rape followed by “in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state.” While the section uses a gender-neutral term for the perpetrator of the offence "whoever", the category of victim is only defined as a woman, excluding men, transgender persons, or a non-binary identity from the same aggravated provisions of the legislation.

This means if a man or transgender person died from sexual assault resulting in vegetative state, they would not qualify under the aggravated provisions of section 66 BNS legislation, creating unequal legislation access to protections under the law. Such selective protections are incompatible with the transformative principles of Article 14 and Article 21 of the Constitution which guarantees equality and dignity for all.

- **Section 69. Sexual intercourse by deceitful means³⁷**

Section 69 of BNS penalizes sexual intercourse through deceitful means that includes false promise to marry or concealment of true identity. Section 69 remains gender-specific, categorizing only women as victims. The law assumes only women might be duped into sexual intercourse, that is ultimately reinforcing patriarchal stereotypes about female honor, chastity, and vulnerability. There is no cogent offence to protect male, transgender, or LGBTQIA+ persons who may also be tricked leading to sexual exploitation. Therefore, while the provision's intent is likely to protect women, Section 69 also reinforces heteronormative beliefs and fails to achieve the needed protection of sexual autonomy in a gender-neutral framework. This is especially problematic in light of emerging equality rights provided for in transformative judicial decisions like *NALSA v. Union of India* (2014)³⁸ and *Navtej Singh Johar v. Union of India* (2018)³⁹.

³⁶ Bharatiya Nyaya Sanhita, 2023, s. 66. Previously Indian Penal Code, 1860, s. 376A.

³⁷ Bharatiya Nyaya Sanhita, 2023, s. 69. Previously Indian Penal Code, 1860, s. 376A.

³⁸ National Legal Services Authority v. Union of India, (2014) 5 SCC 438

³⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

- **Section 70. Gang Rape⁴⁰**

Section 70 of BNS remains gendered in its textual scope of the victim by providing that the offence occurs when "a woman is raped by one or more persons that make up a group." Although the offenders are taken up in a gender-neutral language "persons", the victim classification is expressly female. This fails to recognize that gang rape is not limited to women, and it can occur against men, trans persons, and non-binary individuals as well. Thus, those persons are denied the enhancing aggravating factors associated with gang rape, and any crime committed against them will be classified as a lesser or undefined crime in the hierarchy of criminal law. Focusing exclusively on female victim survivors reinforces the outdated myth that sexual violence is exclusively a crime against a woman and overlooks the more expansive understanding of bodily autonomy and sexual integrity.

- **Section 72. Disclosure of identity of victims⁴¹**

Upon initial review, Section 72, which conveys sexual offences against victims' identities, seems gender-neutral. However, its protective measures are directly attached to the gender discrimination of the sexual offences referenced - that is, the offences described in Sections 64 to 71. For example, aggravated rape offences (Sections 66, 69, 70) only recognize women as victims, and subsequently Section 72 accompanying confidentiality measures only apply to women as victims. Thus, survivors who identify outside of the statutory definition of a victim, and/or are non-binary, LGBTQIA+ cannot count on socially enforceable confidentiality protections. Coupled with the reliance on gender-specific offences, the exclusion of male and LGBTQIA+ survivors continues to discriminate against all genders, as limited statutory definitions prevent recognition of a survivor's lived experience.

Thus, it can be said that BNS 2023 contains some forms of gender-neutral amendments, although key clauses only provide for women as victims. This limits the protection of males, transgenders, and non-binary survivors of sexual violence, showing that, while there has been progress to introduce partial gender-neutrality in our legislations, complete neutrality in sexual offence legislation has still not been achieved. The statute does represent an advancement, however, there is still a considerable amount of legal and judicial work to do in order to fill the prevalent gaps.

⁴⁰ Bharatiya Nyaya Sanhita, 2023, s. 70. Previously Indian Penal Code, 1860, s. 376A.

⁴¹ Bharatiya Nyaya Sanhita, 2023, s. 72. Previously Indian Penal Code, 1860, s. 376A.

3.2 Comparative Analysis: IPC vs. BNS 2023

The transition from the Indian Penal Code, 1860 (IPC) to the Bharatiya Nyaya Sanhita, 2023 (BNS) is a substantial effort to reform and organize laws related to sexual offence in India, particularly in relation to gender neutrality, consent, and clarity of punishment. The old law of Indian Penal Code, like many laws around the world, encapsulated a gendered framework in its definition of sexual offences, especially rape. Section 375 IPC established the criminality of sexual intercourse by a male with a female under specific circumstances, while Section 376 IPC provided respective punishments. Other provisions that also featured in the IPC to the topic of rape and sexual assault were mainly concerned with aggravated forms of rape, such as Section 376D (gang rape), or assault against women (such as Section 354 assault to outrage modesty), or minor provisions that insulted modesty (as with Section 509). All these legal provisions showcased a gendered framing of victimhood that often-assumed patriarchal notions of gender roles and identities. As a result, men, transgender persons, and individuals outside of the male-female binary, were almost entirely excluded from the protective provisions in sexual offence law, narrowing the possible legal remedies to only two situations of protection, and demonstrating legislative gaps in statutory provision.

The BNS 2023 aimed to respond to these gaps by expanding the scope of the definition of sexual offences, and updating particular acts in a more comprehensive terminology. Sections 63–70 of the BNS combine sexual offences into one chapter, which includes offences such as penetration by objects, oral or anal penetration, and offences leading to death or a persistent vegetative state as well. Additionally, some of the sections addressing sexual assault by deception, child exploitation, and harassment use gender-neutral texts, including phrases like “any person” or “child,” indicating a developing awareness regarding inclusion in the definitions of sexual offences. Collectively, these reforms also appear to embody respect for constitutional imperatives such as equality under Article 14, the right to non-discrimination under Article 15, and protection of dignity under Article 21, as well as the obligations that India has entered into with certain international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Despite these significant reforms, a comparative analysis demonstrates that full gender-neutrality is not achieved. Fundamental offences, namely Sections 63, 66, 69, and 70, still construct victims as female only, thereby continuing to endorse the patriarchal victim-offender dichotomy built into the IPC. The BNS may have implemented purer definitions, enhanced sentences, and greater descriptive clarity between aggravated sexual offences, yet the omission of male, transgender, and non-binary

identities as victims serves to reduce the overall coverage of the BNS by persisting with gendered inequalities. Even sections such as Section 72, which seeks to protect victim identity, may possess a gender-neutral coverage, but it is also circumstantially linked to gendered offences, which would consequently be indirectly exclusionary to male or non-female victims. It is therefore imperative that while the BNS 2023 profoundly reforms and updates the definitions and provisions of sexual offence, the use of gender-neutral texts in only selected sections of the statute offers only an incomplete reform. The reliance on female-specific victimhood in the original definitions of core offences thus limits the legal potential for survivors and victims of other genders and diminishes the potential transformative power of the legislation. Ultimately, the BNS constitutes remarkable and significant progress, but does not do enough to provide a comprehensive framework for sexual offence laws in India.

3.3 Positive Shifts Towards Gender Neutrality

The Bharatiya Nyaya Sanhita of 2023 (BNS) includes some very useful advances in gender-neutral protection in the sexual offence context. Perhaps most importantly, some provisions changed the meaning of terms, from gendered terms, such as "woman" or "female," to gender-neutral terms like "any person," especially regarding the context of sections 67 (sexual assault), 68 (sexual harassment), and 71 (voyeurism). This is indeed a legal advancement not only because it interprets sexual violence as applicable to all genders, it is also a major advancement because it responds to decades of criticism that the IPC only protected female victims, while ignoring male victims, transgender persons, and non-binary persons.⁴² BNS continues to expand the definition of sexual assault to include more than just penile penetration as the IPC does in section 375. The adoption of oral, anal, and object penetration into the definition of sexual assault aligns with a more contemporary understanding of bodily violation, as well as international criteria on the allowable forms of invasion. BNS thus reflects the comparative law examples modelled on the UK and Canada legislation, which adopted definitions that include all forms of penetration.⁴³ This is certainly an example of legislation reflecting the changing understand system of sexual autonomy of the judiciary, as seen in *Navtej Singh Johar v. Union of India*, where the Supreme Court endorsed the dignity and equality of LGBTQIA+ persons, by decriminalizing consensual relationships between same gender persons.⁴⁴

⁴² Indian Penal Code, 1860, §§ 375–376; Bharatiya Nyaya Sanhita, 2023, §§ 67, 68, 71.

⁴³ Law Commission of India, 172nd Report on Review of Rape Laws (2000).

⁴⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

In addition, provisions such as Section 72 BNS, which guarantees confidentiality of the victim's identity, offer gender-neutral procedural protections and uphold the dignity of survivors regardless of gender identity. This provision aligns with the Supreme Court's determination in *Nipun Saxena v. Union of India*, which called for strong privacy protections for victims of sexual offences.⁴⁵ In fact, with the incorporation of means of deception, the suppression of identities, and abuse of authority as criminalized methods of sexual exploitation, the BNS demonstrates a receptiveness to rising apprehensions related to relational abuse in contemporary contexts. These reforms continue to affirm constitutional guarantees in Articles 14, 15 and 21, reestablishing protections of equality and bodily integrity.⁴⁶ While changes are progressive and contain limitations, they represent positive and significant steps demonstrating an increasing legislative recognition of sexual violence as an assault on personal autonomy, rather than an injury confined to women. The BNS thus marks a transition, the one that has considerable limitations but a more inclusive and rights-based model of sexual offence adjudication in India.

3.4 Ambiguities and Limitations in BNS 2023

The enactment of The Bharatiya Nyaya Sanhita, 2023 marks an important reform in India's criminal justice system. However, there are notable gaps and uncertainties in certain sections of the law that require closer assessment.

(i) Partial Gender-Neutrality in Sexual Offence Provisions

While certain sections of BNS 2023 attempt to advance towards gender-neutral text, the definition of rape remains as an offence only against women, retaining the victim specific aspect of the offence. BNS Section 63⁴⁷ defines rape as gradient of penetration against a woman, leaving male and transgender victims devoid of legal protection. This partial neutrality of the definition is in clear opposition to the constitutional guarantees of equality and prohibitions on discrimination found in Articles 14 and 15 of the Constitution.⁴⁸ The judiciary in *National Legal Services Authority v. Union of India*⁴⁹, recognized the right of recognition of all individuals to their preferred gender identity and existence with dignity; however, the legislative text still lacks direct protection to

⁴⁵ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703

⁴⁶ Constitution of India, arts. 14, 15, 21; *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴⁷ Bharatiya Nyaya Sanhita, 2023, § 63.

⁴⁸ The Indian Constitution. arts. 14 & 15.

⁴⁹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

such persons from penetrative sexual assault. Similarly, in the definition of the offence of rape, the offender remains for the most part specific to a male offender; this creates the assumption that only males can commit the offence and does not capture the growing body of knowledge regarding sexual crimes by persons of any gender. The international human rights instrument suggests that fully gender-neutral definitions should be used as the default definition to ensure protection and/or benefits to all persons, which is yet to be fully integrated in BNS.

(ii) Ambiguity in Recognition of Marital Rape Exception

The BNS operates from an assumption of marital rape immunity for couples living together and over a certain age, maintaining a tradition of legal protection for non-consensual intercourse, inside of marriage.⁵⁰ This assumption contradicts the concept that all sexual relations require ongoing and constant consent. The Supreme Court in *Independent Thought v. Union of India*⁵¹ questioned the constitutionality of this assumption to a limited extent, restricting criminal offense for sexual intercourse with minor wives but not extending its reasoning for adult women. The Delhi High Court split decision of *RIT Foundation v. Union of India*⁵² demonstrated the divide of judicial opinions on the issue. Therefore, BNS statutory exclusion continues to perpetuate patriarchal assumption enabling marriage as an unconditional consent contract and continue creating a lack of autonomy and bodily integrity for women.

(iii) Ambiguous Definitions of Consent and sexual violation

While the BNS does state a definition of consent, the statute fails to consider the contemporary contexts like forceful control, imbalance of power in intimate relationships and consent acquired through manipulation or fear of some consequences. In the case of *Uday v. State of Karnataka*⁵³ and *Pramod Suryabhan Pawar v. State of Maharashtra*⁵⁴ the Supreme Court noted that when consent is gained through misinformation or false promise that is not legitimate consent. Nonetheless, BNS does not expressly reflect such jurisprudence and thus, there is potential for interpretational inconsistency. Additionally, the absence of decisional guidance may lead to judicial subjectivity and inconsistent punishment.

⁵⁰ Bharatiya Nyaya Sanhita, 2023, Proviso to § 63.

⁵¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁵² *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1897.

⁵³ *Uday v. State of Karnataka*, (2003) 4 SCC 46.

⁵⁴ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608.

(iv) Limited Protection for Digital Sexual Crimes

Contemporary sexual crimes often take place in online realms, such as Image-based sexual abuse, Non-consensual pornography and Deepfake-based molestation. Provisions in BNS 2023, without IT Act 2000⁵⁵, do not effectively integrate these forms of sexual crime that are founded in cyberspace, but rely on the IT Act for certain remedies. The fragmented way in which sexual crimes are structured leads to uncertainty in jurisdiction and enforcement, especially when dealing with cross border offences. These norms need to be addressed to ensure a smooth legal shielding of sexual offences in an increasingly digital society.

(v) Lack of Survivor-Centric Provisions and Procedural Safeguards

The BNS of 2023 is predominantly punitive, but does not sufficiently include rehabilitation, and the privacy and psychological support for victims. In *Nipun Saxena v. Union of India*⁵⁶ the Supreme Court stated confidentiality and dignity for sexual assault victims and survivors are crucial. There are still no mandatory and available immediate counseling provisions, weak mechanisms for enforcement of compensation, and trial delays persist despite BNSS' procedural reconfiguring. Thus, the reform no longer lends support to reducing secondary victimization of survivors.

4. JUDICIAL PERSPECTIVES

The judiciary's role has been essential to the evolution of sexual offence laws in India. While there are certainly legislative changes such as the Criminal Law Amendments and the Bharatiya Nyaya Sanhita, 2023, that indicate progressive tendencies in the law, it has been the judicial interpretation that has consistently infused constitutional values of dignity, equality, and autonomy into the framework of sexual offence legislation. In addition, judicial decisions have filled gaps in legislation, expanded the meaning of consent, rights of victims, and gender identity from their decisions. Thus, understanding the past, present and future of sexual offence jurisprudence under BNS 2023 requires consideration of judicial perspectives that have less effect on, and continue to affect, this area of law.

4.1 Judicial Pronouncements

India's judicial system has played a critical role in reforming sexual violence law from a morality-based, patriarchal notion, to one based on basic dignity, equality, and bodily

⁵⁵ Information Technology Act, 2000.

⁵⁶ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

autonomy. Judicial interventions have triggered legislative reforms, including the Criminal Law Amendments of 1983, 2013, and 2018, all of which expanded protections for sexual assault survivors. The Mathura rape case in *Tukaram v. State of Maharashtra*⁵⁷ illustrated judicial insensitivity in its acquittal of police officers based on the reasoning that silence or lack of resistance implied consent. The backlash from across the country forced Parliament to amend rape law to eliminate consent presumptions simply because a woman did not physically resist. In *State of Punjab v. Gurmit Singh*⁵⁸, the Supreme Court further advanced the case law by addressing the testimony of the survivor with a measure of respect, holding that unless serious doubts existed, it could not be required a rape survivor testimony be corroborated, rejecting misogynistic assumptions in evaluating evidence. In a remarkable break with the past, *Bodhisattwa Gautam v. Subhra Chakraborty*⁵⁹ characterized rape as "crime against basic human rights," and upheld interim relief for the victim while enhancing the jurisprudence around victim-centered remedies. The Court reiterated that sexual violence is not just an assault on a woman's body, but is also a degrading attack on dignity, protected by Article 21. The notion of personal autonomy and bodily integrity was further developed in *State of Karnataka v. Krishnappa*⁶⁰ when the court acknowledged that any act that infringes upon sexual autonomy constitutes an egregious violation of women's comprehensive numeration of fundamental rights. This was important and conceptually later translated into the broad definition of consent in the Criminal Law Amendment Act, 2013.

A landmark constitutional ruling occurred with *National Legal Services Authority (NALSA) v. Union of India*⁶¹ in which the court recognized transgender persons as a "third gender" in upholding their rights to equality (Articles 14-15) and dignity (Article 21). This decision was not specifically about rape law, but provided the constitutional basis for recognizing gender neutrality in sexual offences, partly reflected in BNS 2023. In a similar vein, *Navtej Singh Johar v. Union of India*⁶² acknowledged that consensual same-sex relations are no longer criminalized, thus expanding the constitutional meaning of sexual autonomy and privacy generally. The decision emphasized that morality cannot supersede the fundamental right, which again illustrated that sexual identities beyond a binary must be granted equal protection

⁵⁷ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

⁵⁸ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

⁵⁹ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

⁶⁰ *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75.

⁶¹ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

⁶² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

under law. In the ruling of *Independent Thought v. Union of India*⁶³, the Supreme Court invalidated the marital rape exception for wives aged between 15–18 years, as it held that marital authority over sexuality was inherently unconstitutional for minors, whereas adult wives are still left unprotected, and the BNS has similarly abstained from reform in this area. Another noteworthy judgment is *Deepak Gulati v. State of Haryana*⁶⁴ which explained that consent gained through deception, coercion, or false promise cannot properly be characterized as free consent, and this principle is now similarly reflected in the provisions of the BNS, which criminalize non-consent during an ongoing sexual act, by reason of deception.

Overall, these judgments showcase the progressive interpretation by the judiciary of the laws pertaining to sexual offences to reflect constitutional morality, protections for survivors, and gender inclusion. These judgments leave a strong basis in jurisprudence which may characterize the interpretation of Sections 63-70 of the BNS.

4.2 Interpretative Scope for Future Jurisprudence

The enactment of the Bharatiya Nyaya Sanhita, 2023 marks an important occasion where the judiciary will have significant responsibility to ensure laws around sexual offences continue to be applied and developed consistent with a constitutional framework. The courts will need to negotiate the relationship of the text of BNS and legislative purpose, social realities, and international human rights obligations in the interpretation of sexual offences under BNS.

4.2.1 Harmonizing BNS with Constitutional Equality Framework

The retention of female-specific victimization in core sexual offence provisions raises possible constitutional issues. Articles 14 and 15 requires equal protection, irrespective of gender, and *NALSA v Union of India*⁶⁵ and *Navtej Singh Johar v. Union of India*⁶⁶, two recent Supreme Court cases, provide support for this constitutional norm with explicit inclusivity around dignity for all gender identities. It is likely that courts will have to look at the exclusion of male and transgender survivors from the definition of rape in Section 63 BNS through a constitutional equality and dignity lens under Article 21.

⁶³ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁶⁴ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675.

⁶⁵ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

⁶⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

4.2.2 Re-evaluation of the Marital Rape Exception

Despite the BNS enshrining a marital immunity in Section 63, the Supreme Court's limited abrogation of this exemption for minor wives in *Independent Thought v. Union of India*⁶⁷ demonstrates an increasing sensitivity toward forced sexual intercourse in a marriage. The judiciary may further analyze the constitutionality of sustaining marriage as a shield against rape prosecution, as the judiciary has already recognized in *Suchita Srivastava v. Chandigarh Administration*⁶⁸ that marriage does not take away bodily autonomy.

4.2.3 Expansion of Consent Jurisprudence

Courts have emphasized and clarified again and again that consent arises from free will and agency, and is not compliance, as explained in *State of Punjab v. Gurmit Singh*⁶⁹ and *Karthi @ Karthikeyan v. State*⁷⁰. And, as the BNS will broaden coverage for sexual acts beyond penis-vagina penetration, this interpretation should expect scrutiny similar to consent in situations of psychological pressure, intoxication, digital manipulation, and power differentials, and to be approached with the needs of the survivor, in keeping with the spirit of the BNS. The judiciary will likely continue to affirm a broad, autonomy driven understanding of consent.

4.2.4 Addressing Digital and Technology-Facilitated Sexual Offences

The nature of sexual exploitation has changed as a result of technology. While BNS includes some provisions that address digital offences, the judiciary has to develop progressive interpretations to respond to Non-consensual distribution of intimate images, 'Deepfake' pornographic exploitation and Grooming and coercion online. Cases such as *Shreya Singhal v. Union of India*⁷¹, suggest that the Court is willing to leverage free-speech rights to guard against online abuse. Thus, it is likely that jurisprudence in the future will develop victim-centric protections in cyber-space.

4.2.5 Enhancing Survivor Rights and Procedural Justice

In line with *Bodhisattwa Gautam v. Subhra Chakraborty*⁷² and *Nipun Saxena v. Union of India*⁷³, the judiciary has made robust the rights associated with Restitution, Privacy and

⁶⁷ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁶⁸ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

⁶⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

⁷⁰ *Karthi @ Karthikeyan v. State*, (2013) 12 SCC 710.

⁷¹ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

⁷² *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

⁷³ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

confidentiality, Evidence-gathering processes and standards that are sensitive. As BNS continues to be implemented, courts should continue to enforce trauma-informed criminal processes and mitigate justified survivor apprehension across all genders.

4.2.6 International Human Rights Alignment

To ensure that the BNS provisions are compatible with India's obligations under CEDAW and UDHR, judicial interpretation will need to emphasize: Non-discrimination, Protection of minority gender identities, Bodily autonomy as a universal right. Subsequently, international standards are adopted akin to persuasive constitutional sources by courts, notably in *Vishaka v. State of Rajasthan*⁷⁴.

The BNS 2023 provides in large part a legislative framework, however, it will be through judicial interpretation that the promise of equality, dignity, and gender justice will be realized in full. Future courts hold the power to steer out the remnant strands of gender discrimination, introduce additional protections for marginalized survivors, and to adapt law governing sexual offences to social and technological advancement.

5. IMPLICATIONS AND CHALLENGES

The introduction of gender-neutral sexual offence provisions in the Bharatiya Nyaya Sanhita, 2023 represents a significant legal shift. However, its practical implementation requires careful scrutiny of enforcement realities, societal responses, and institutional preparedness. Here are some key implications and challenges likely to arise during the operationalization of the new framework.

5.1 Practical Challenges: Policing, Investigation & Victim Identification

While certain offenses under BNS may use gender-neutral language, law enforcement practices still rely on explicit gendered biases. Law enforcement agencies have traditionally trained police to identify a woman as a sexual offense victim, while male victims, transgender or non-binary individuals may face doubt, bias, scorn or be denied institutional safety. In addition, reporting barriers are increased for male and LGBTQIA+ survivors who already face stigma, moral judgment, and may fear being misidentified as offenders instead of victims. The rape kit and medico-legal certificates are female-centered; the clinical guidelines for anal, oral or non-penile injuries are insufficient. There is insufficient forensic infrastructure for

⁷⁴ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

sexual offenses where various types of penetration or violence recognized in BNS are used. Offences carried out via the internet or by means of deceptive consent (Section 69 BNS) are often areas where police lack training considerations and therefore cannot adequately investigate or prosecute offenders. Therefore, without comprehensive police reform, sensitization and specialized training, the gender-neutral intention embedded in the legislation could be compromised at the enforcement level.

5.2 Socio-Cultural Implications

Sexual violence within India operates through patriarchal and heteronormative social constructs that assume women are the default victims. Recognizing sexual offences against all genders may threaten existing cultural values and mitigate social refusal and denial of male and transgender victimhood. Risk of secondary victimization or character assassination, homophobia, and social exclusion also persists. Family pressure also exists to not report complaints for fear of stigma, primarily because of homophobia surrounding same-sex violence. There is narrative construction highlighting and criminalizing the misuse of evidence against legislation promoting gender neutrality, overshadowing its legitimate purpose of protection. And also, while gender-neutral laws relate to the intersection of rights, the unequal balance of power within patriarchy remains an underlying worry. The law is neutral but believes women have a more vulnerable position.

5.3 Institutional and Procedural Concerns

Judicial institutions, healthcare systems, legal aid services, rehabilitation systems must evolve to incorporate gender-neutral protections for victims. Currently, many victim-support programs (sanctioned and voluntary), shelters, victim-recovery programs, and compensation systems presently prioritize women victims, while failing to consider other victims. In particular, the victim-disclosure protections in Section 72 of BNS - which protect against public disclosure of the victim's identity - apply only to offences that recognize the offence itself was gendered, meaning that victims who are not women may be without confidentiality protection or reasonable assurances about public disclosure. The judicial process still involves stereotypes - for example, that victims would "fight back" - and may undermine credibility among survivors of non-traditional genders. Reform surrounding addressing sexual violence in places of detention or care for children, or for marginalized populations will require reform for institutional accountability and monitoring systems. The lack of data collection requirements that tracks sexual offences against non-women, limits the ability to assess and correct existing

policy. Effective, gender-neutral criminal justice, then will require systemic change in institutional structure, procedural norms, and configurations of support for victims.

6. CONCLUSION

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) represents a significant step in the evolution of India's criminal justice system, symbolizing India's first explicit attempt towards de-colonizing antiquated laws and ameliorating their text to align with contemporary constitutional and social contexts. This paper reveals that while the BNS signifies an important legislative evolution, its approach to gender neutrality in sexual offences remains only partially. The restructuring of offences, the expansion of definitions, and the use of gender-neutral terminology in selective provisions thus suggest advancement. However, critical sections of 63, 66, 69, and 70, continue to categorize victimization by gender, continuing to uphold a binary and exclusionary model of sexual violence. The study suggests that, for gender neutrality to be genuinely achieved, victim protection must be extended universally, thus applying to not only women, but men, transgender constituents, and non-binary constituents. The constitutional interpretation of gender, identity, and dignity as established by some landmark judicial pronouncements, extends the interpretation of the rights of sexuality and bodily integrity to be fundamental rights under Article 21. Hence, if the law desires victims of violence to be protected universally and equally, the legislature will have to build on the foundation already established by the judiciary towards legal provisions that are consistent with the courts understanding of inclusivity. Although the BNS 2023 has introduced a more refined understanding of offences, developed penalties, and extended the classification of offences, it remains in all material respects lacking in creating a gender-just framework. The ongoing inclusion of certain genders into the construct of victimhood violates Article 14 and Article 15 of the Indian Constitution and it goes against India's obligations and commitments in terms of international law and treaty obligations such as CEDAW and UN Declaration of Human Rights. Hence, the journey toward a gender-neutral criminal laws is far from complete. To achieve the constitutional promise of equality and justice, legislative refinement, judicial sensitivity, and institutional transformation are needed. Only through such an integrated and comprehensive approach, India can truly frame a gender-inclusive and victim-centric legal framework, that upholds the dignity and autonomy of every individual, regardless of gender or identity.

6.1 Verification of Hypothesis

The research hypothesis states that *“The current definitions, scope and statutory language of sexual*

offences in BNS 2023 are insufficient to cover the full range of harms experienced by male, transgender, and non-binary victims, resulting in persistent protection gaps and limited access to justice for these groups.” A detailed doctrinal, comparative, and structural analysis confirms the validity of this hypothesis.

Although the Bharatiya Nyaya Sanhita (BNS) 2023 sought to modernize and rationalize sexual offence provisions, the language of the law still reflects a gender-specific framework for the most serious crimes. The term "rape" is still re-defined as the victim being a woman, thus male, transgender, and non-binary persons are denied the same protection offered to the principal victim. While the law comprises some gender-neutral provisions in relation to the different forms of sexual assault, selectively neutralizing these provisions creates contradictions internally and leads to fragmented protection. This is in conformity with the hypothesis which states that the statutory framework does not cover the full range of victims. The act-based definitions adopted in BNS 2023 remain rooted in biological and heteronormative conceptions of sexual harm. The transgender and non-binary community members may be subjected to various coercive and sexually abusive acts, and not just penetration as is the case with BNS. As the law continues to characterize crimes based on traditional genital-specific acts rather than on violations of bodily autonomy and consent, many forms of sexual violence against gender-diverse persons fall outside the legal definition. This is an acknowledgment that the existing language is not enough to encompass their lived experiences.

Practical access to justice remains severely constrained for male, transgender, and non-binary victims. Police manuals, medico-legal protocols, and investigative procedures still operate on the assumption that only women are “true” victims of sexual violence. When statutory language itself does not clearly recognize these groups, frontline institutions face ambiguity and often refuse to register complaints or misclassify them under lesser offences. As a consequence, under-reporting, lesser sentencing, and barriers to prosecution are directly caused by this freefall in frontline institutions - precisely the protection gaps identified in the hypothesis. Comparative legal analysis shows that many jurisdictions have adopted fully gender-neutral sexual offence codes, defining crimes on the basis of consent and coercion rather than victim identity. These models have demonstrated clearer prosecution standards and improved reporting by male and gender-diverse victims. The BNS, 2023 is far from these universally recognized standards of openness and is still behind the Indian judiciary's recognition of gender diversity in its precedents and subsequent constitutional jurisprudence affirming identity rights.

The discrepancy between constitutional principles and statutory language further supports the hypothesis. The presence of other gender-inclusive laws, such as the Protection of Children from Sexual Offences Act (POCSO), which is totally gender-neutral, and the Transgender Persons (Protection of Rights) Act, 2019, which acknowledges the rights and vulnerabilities of gender-diverse individuals, highlights the regressive nature of the BNS's sexual offence framework. The BNS 2023's failure to meet these progressive benchmarks points to an incomplete legislative reform, which in turn, implies the existence of systemic protection gaps. Therefore, the hypothesis stands verified:

The definitions, scope, and language of sexual offences in BNS 2023 are not sufficiently inclusive and male, transgender, and non-binary victims are not comprehensively protected. The resulting statutory insufficiency causes the groups to continuously face legal and procedural obstacles, their reporting is limited, the clarity of prosecution is limited, and the inequities in access to justice persist for these groups.

6.2 Recommendations / Suggestions

Addressing the complications of initiating prosecution against sexual offences under the Bharatiya Nyaya Sanhita (BNS) calls for a comprehensive response that not only involves changes to existing laws, but also rethinking the structures within the criminal justice system as a response to the needs and experiences of victims. The following recommendations are therefore proposed:

(a) Legislative Refinement and Gender-Neutral Drafting

BNS 2023 shows an effort to be inclusive; however, certain provisions still utilize gendered language. This is especially evident in Sections 63, 66, 69 and 70. The legislature must go through the process of textual amendment to replace gendered terms such as "woman" or "he" with neutral alternatives such as "person," "individual" or "victim." This would ensure that male and transgender victims would also be afforded the same protections and would bring Indian law into conformity with constitutional requirements under Articles 14 and 15 and the global human-rights framework of CEDAW and the Yogyakarta Principles. Recognizing that language evolves over time and vocabulary associated with marginalized communities can change, periodic revisions (every five years) by a parliamentary standing committee or a sub-group of the law commission can ensure that definitions remain inclusive and responsive to social development.

(b) *Judicial and Investigative Capacity Building*

Improving law enforcement capacity through specialized training programs that will focus on gender-neutral approaches to investigate, in addition to trauma-informed interviewing, timely collection of evidence, and preservation of chain of custody. Police stations will require accessible forensic services and potentially enhanced technological tools for effective identification of offenders in cases of technology-facilitated sexual offences.

(c) *Procedural Reforms and Access to Justice*

The judiciary mechanisms require enhancing speed of response, which is arguably still the biggest deterrent to victims seeking justice. Special courts dedicated solely to sexual offences, strict adherence to statutory timelines for victim and accused appearances before courts, and imposing in-camera trial proceedings can ensure accused and courts adjudicate such cases more expediently and respectfully. Using virtual courtroom technology may reduce the potential harassment or threats from the accused and prevent revictimization during the trial.

(d) *Victim-Centric and Survivor-Sensitive Frameworks*

The system will require a shift to a victim-centered lens prioritizing rehabilitation over punishments. This could include easy access to psychological counseling, both interim and final compensation plans, and provision for sexual assault response teams (SART) and victim liaison officers. Furthermore, a survivor privacy protection framework that includes encrypting identifying information and legal consequences for breaches will improve trust in the reporting mechanism.

(e) *Public Awareness and Societal Sensitization*

Public participation and educational initiatives are a necessary part of reducing harmful stereotypes based on patriarchy, victim-blaming, and casteism. Education-based sensitization at schools and colleges such as national media campaigns on consent and community involvement through NGOs could increase reporting and decrease stigma.

(f) *Institutional Accountability and Monitoring*

Effective inter-agency coordination is required between all health care professionals, police, prosecutors, cybercrime units, social welfare departments, and legal aid. National centralized registries for sexual offenders and missing children will significantly improve the effectiveness of policing prevention. Continued audits and transparency of data would also further accountability of civil institutions.

(g) Criminalization of Certain Acts

It is necessary to make Non-Consensual Unnatural Acts an offence again. A provision must be introduced to expressly criminalize the offence of unnatural sexual acts, to include forcefully obtaining a nonconsensual unnatural sexual act regardless of gender. Bestiality must be defined in a Criminal Offence provision. Legislation must be drafted to criminally prohibit explicit sexual actions with animals that comply with international animal welfare standards.⁷⁵

(h) Integration of Forensic and Technological Advancements

The future of investigation of sexual offences relies on scientific evidence and digital forensics. Every police station should have standard sexual assault evidence collection kits, and availability of forensic-laboratories need to be addressed to ensure timely DNA analysis and proper chain-of-custody procedures. Digital evidence from CCTV footage, social media communications, or metadata should also be made admissible in the same way as physical evidence are and follow the same uniform evidentiary rules as established under the Bharatiya Sakshya Adhiniyam 2023. A National Sexual Offenders Registry linked to a biometric or digital identity verification system would also help facilitate a more preventative form of policing in respect of sexual offences.

(i) Harmonisation with Other Laws

To prevent inconsistency, the BNS must be aligned with the other special laws, particularly the Protection of Children from Sexual Offences (POCSO) Act 2012, the Transgender Persons (Protection of Rights) Act 2019, and the Information Technology Act 2000. Consistent and uniform definitions of terms such as "sexual assault", "penetration" and "consent" would help to mitigate conflicting interpretations. Procedural safeguards available under criminal procedure & evidence laws should also be harmonized with each other to ensure that uniform standards exist across genders & age groups.

(j) Strengthening Research and Policy Evaluation

Continuous evaluation in academics and policy works will be critical to examining how BNS reforms operates in practice. Universities, research institutes, and judicial academies should work alongside the Law Commission of India to conduct empirical research studies that examine patterns of reporting, prosecuting, conviction, and victim

⁷⁵ Dixit, Praveen, "Bharatiya Nyaya Sanhita on sexual offences: A progressive rewrite or unnatural regressive silence" (2025) Vol 10 Issue 2, *IP International Journal of Forensic Medicine and Toxicological Sciences*, 34-36, available at <https://ijfmts.com/archive/volume/10/issue/2/article/2396/pdf>

satisfaction. An openly accessible repository of the research work would provide the policymakers with an opportunity to improve future amendments based on evidence rather than assumptions.

(k) International Cooperation and Best-Practice Exchange

India may even be able to strengthen its policy approach with lessons from the best practices of other countries. Regular bilateral engagements and workshops with Canada, the UK, and South Africa, each of which has implemented gender-neutral sexual offence laws that would facilitate a deep dive into improving procedural guidelines, victim rehabilitation, and sentencing options. Engaging in UN-Women and Commonwealth Legal Forums would also help situate India in terms of the global discourse about gender equality.

6.3 Scope for Future Research

The enactment of the Bharatiya Nyaya Sanhita (BNS) 2023, has opened new pathways in terms of criminal laws and gender justice. However, because it has been recently implemented, the real-life impact of the law, its interpretational direction, and its effectiveness in practice has not been studied comprehensively. This offers significant areas of future research, both doctrinal and empirical, across multiple interrelated domains of criminal law, gender studies, and constitutional theory.

(a) Empirical Evaluation of BNS Implementation

Future research must explore the gulf between the legislative intent of gender neutrality and the extent to which it is followed through to implementation by the criminal justice system. Research can explore if police, prosecutors, and judges are interpreting gender-neutral provisions in practice and whether bias remains in investigation and prosecution, as well as in whether individuals outside the female gender spectrum will receive the same protections. Empirical studies of police reporting, convictions and trials post-BNS will determine whether gender neutrality translates to real opportunities for all individuals or whether this remains theoretical. Additionally, comparative research cross-state analysis will highlight differences in implementation and overall access to justice.

(b) Re-Examining the Concept of Consent

The law surrounding consent is ever-changing. Future legal scholarship could focus on the interpretive elasticity of “consent” under the BNS, particularly in cases with conduct

involving coercion, intoxication, or deception. Future scholarship could also study the judicial reactions to “affirmative consent” models adopted by jurisdictions like Canada, the UK, and Australia, and whether India could think towards a similar framework on explicit and informed consent. The interplay of consent with privacy, autonomy, and bodily integrity under Article 21 invites ample constitutional analysis.

(c) *Intersectional and Inclusive Approaches*

A significant area of future research relates to intersectional criminology and the study of violence based on gender in relation to caste, class, disability, religion, and sexual orientation. Given that BNS has enhanced the textual inclusivity of particular offences, research should also investigate whether justice is experienced by transgender, intersex, and non-binary persons to the same extent in BNS. Empirical and doctrinal research can reveal the impact of procedure barriers, such as police resistance and insensitivity or lack of inclusive shelter homes that may exist for marginalized communities. It is also necessary to consider the interplay of intersectionality with BNS and the Transgender Persons (Protection of Rights) Act, 2019 and further develop doctrinal alignment.

(d) *Comparative and International Perspectives*

By engaging in comparative legal analysis will give out an idea about how other jurisdictions have implemented sexual offence laws with a gender-neutral definition of sexual offences. The UK’s Sexual Offences Act 2003, Canada’s Criminal Code, and South Africa’s Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 all are valuable examples of a comprehensive, gender-inclusive statute. Comparative research could access the extent to which India's BNS aligns with global human rights standards overviewed by CEDAW, the Istanbul Convention and the UN Handbook for Legislation on Violence Against Women. Accessing these studies may help policymakers strengthen the Indian statute as it relates to international obligations and standards of best practices.

(e) *Digital and Technological Dimensions*

The increasing incidences of digital sexual crimes such as cyberstalking, online grooming, deepfake pornography, and virtual sexual harassment requires future research to address the nexus between sexual offences and cyber law. The BNS does not include a dedicated digital sexual offences framework and relies on the Information Technology Act, 2000. Research may examine whether a standalone Digital Sexual Crime Code or harmonizing the Digital Personal Data Protection Act, 2023, is

warranted to provide sufficient redress and deterrence. Researchers can also explore jurisdictional problems, evidentiary issues, and privacy problems that arise during the trials of digital sexual offences.

(f) Doctrinal Conflicts and Statutory Harmonization

Another direction for research is to resolve statutory overlap provided under BNS and other laws like the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Juvenile Justice Act, 2015 and the Domestic Violence Act, 2005. The difference in definitions between "penetrative sexual assault" under POCSO, and "rape" under BNS may create interpretive ambiguities. Scholars may be able to inquire ways courts harmonize these areas of conflict and see if amendments or judicial clarification can allow for shared terms.

(g) Judicial Interpretation and Constitutional Review

As BNS 2023 is not yet subjected to any substantial judicial scrutiny, future research might focus on serious constitutional challenges and their judicial interpretation. Certain questions, like the continued existence of the marital-rape exception, the boundaries of gender-neutrality, and equality in sentencing, may soon be considered by constitutional courts. Scholars will therefore be able to explore how the Supreme Court and High Courts could reconcile provisions in BNS with Articles 14, 15 and 21, thus shaping the next chapter of sexual offence jurisprudence in India.

(h) Restorative and Transformative Justice Models

Conventional methods of retributive justice may not fully address the needs of survivors. Therefore, it would be helpful for researchers to also build on models of restorative justice for sexual offences to balance accountability and rehabilitation. There are comparative studies that may aid in the development of restorative justice approaches that prioritize victims' healing, community access and re-integration of offenders into society while preserving victims' dignity.

Thus, the opportunities for future research as part of the BNS 2023 framework are expansive and multidisciplinary, from doctrinal harmonization and constitutional interpretation of the current law, to the challenges presented in the digital age and the victim-centred reforms we have and continue to discuss openly. The aim of such research should be to elevate the values of equality, dignity and inclusiveness that the framers of the BNS had in mind, beyond the text of legislation, and toward a practice that solidifies India's commitment to a truly gender-just criminal justice system.