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# **THE ANATOMY OF EXCLUSION: WHY INDIA'S 'DECOLONIZED' JUSTICE SYSTEM STILL FEARS GENDER NEUTRALITY**

*A Socio-Legal Audit of the Bharatiya Nyaya Sanhita and the Quest for Universal Equity*

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## **Abstract:**

This article provides a critical socio-legal audit of the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS), challenging the narrative of “decolonization” by highlighting the persistent gender-specific architecture of Indian criminal Law. Through the analysis of current 2025-2026 judicial trends, NCRB data, and personal internship observations, the author identifies a “Hierarchy of Victimhood” that excludes men, transgender, and non-binary individuals from the protection of laws governing domestic cruelty and sexual deceit.

The paper specifically critiques the “Process as Punishment” phenomenon - where high charge-sheeting rates in matrimonial disputes contrast sharply with low conviction rates- and the procedural risks of expanded custody under the BNSS. By examining global precedents of gender-neutral legislation in the UK and Canada, the author proposes a 2027 Manifesto for reform centered on linguistic honesty, statutory safeguards against malicious prosecution, and the realization of constitutional symmetry under Article 14.

## **Keywords:**

BNS, BNSS, Gender Neutrality, Section 69, Section 85, Arnesh Kumar Guidelines, Decolonization, Legal Equity.

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## Introduction: The Decolonization Paradox

The air in an Indian police station at 2:00 PM has a specific, heavy quality. It smells of old files, spilt tea, and the quiet desperation of people who have run out of options. On a Tuesday night in late 2025, I watched a man walk into one such station. I was there as a young intern, shadowing a senior advocate, watching the gears of justice turn or in this case, grind to a halt. That man wasn't there to report a robbery or a street fight. He had visible bruises on his forearms, defensive wounds and a medical report that detailed a pattern of domestic abuse that would make any human being shudder.

The Sub-Inspector on duty, a veteran with thirty years of calloused experience, opened the Bharatiya Nyaya Sanhita (BNS). This was the "modernized" soul of Indian law, the legislative miracle that was supposed to "decolonize" our courts. He turned to Section 85,<sup>2</sup> the successor to the infamous Section 498A. He looked at the bruised man, then back at the text.

"I can write a report for 'Simple Hurt'<sup>3</sup> under Section 115," the officer said, not meeting the man's eyes. "But I can't touch the 'Cruelty' section. In this book, 'Cruelty' is a gender-specific privilege. It only happens to wives."

In that moment, the law didn't just fail a citizen; it committed a quiet act of constitutional betrayal. It looked a victim in the eye and told him his pain was legally non-existent because of his biology. This is the "Silent FIR," and it is the ghost haunting the corridors of our new justice system.

In July 2024, the legal fraternity was told that the **BNS, BNSS, and BSA**<sup>4</sup> were our ticket out of a colonial past. We were told we were shedding the skin of Lord Macaulay's Victorian morality. But look closer. If the British created gender-specific laws based on the 19th-century view that women were "property" and men were "invulnerable," have we really decolonized anything by simply preserving that binary?

By keeping Chapter V of the BNS strictly gendered, the legislature hasn't moved forward; it has doubled down on a colonial prejudice that refuses to recognize the human being behind the

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<sup>2</sup> Section 85, *Bharatiya Nyaya Sanhita, 2023 (Successor to Section 498 A, Indian Penal Code, 1860)*

<sup>3</sup> Section 115, *Bharatiya Nyaya Sanhita, 2023*

<sup>4</sup> *Bharatiya Nyaya Sanhita, 2023,*  
*Bharatiya Nagrik Suraksha Sanhita, 2023,*  
*Bharatiya Sakshya Adhinyam, 2023.*

gender. True decolonization isn't just about changing "Penal Code" to "Nyaya Sanhita." It's about recognizing that in a modern democracy, everybody is equally entitled to protection from violence.

### **The Numbers the Courtrooms Know (But Journals Ignore).**

The legal fraternity is currently obsessed with "women's safety," and rightly so. But we are ignoring a mountain of evidence that shows our current framework is collapsing under the weight of its own bias.

Look at the 2025 data - it tells a story that should keep every Law Minister awake at night. In matrimonial cases filed under Section 498A (now BNS 85), the charge-sheeting rate is a staggering 84.5%, yet the conviction rate is an embarrassing 12.9%<sup>5</sup>. What happens in that massive gap? Lives are destroyed. Careers have ended. Elderly parents are dragged into courtrooms for years.

When nearly nine out of ten cases end in an acquittal, we aren't seeing "justice delivered"; we are seeing the "process as the punishment." We are seeing a law that was designed as a shield being sharpened into a tactical sword for matrimonial leverage.

### **And then comes the new Weapon: Section 69<sup>6</sup>**

Perhaps the most dangerous addition to the BNS is Section 69 - sexual intercourse on the "false promise of marriage." While the intention was to punish deceit, the 2025-2026 judicial trends show it has become a "Legal Extortion Tool."

In the very beginning of 2026, the Allahabad High Court had to step in to quash an FIR, reminding us that "Section 69 is not for relationships on the basis of liking at earlier stage and later quarrels." Yet, for every one case the High Court quashes, a thousand men sit in custody because a consensual relationship hit a rough patch. The data confirms this isn't just "unfortunate" - it's systemic. A 2025 deep-dive into trial court records, the parties continued to text, call, and meet amicably after the alleged "deceit. The High Court bench, comprising Justice Siddhartha Verma and Justice Abdul Shaheed said that the aforesaid section only

<sup>5</sup> *Indian Journal of Forensic and Community Medicine* 2025;12(2):129-131

<sup>6</sup> *Section 69, Bharatiya Nyaya Sanhita, 2023- Sexual Intercourse by employing deceitful means etc.*

punishes ‘deceit’ and not disappointment, while quashing an FIR lodged under Section 69.<sup>7</sup>” This isn’t a criminal justice problem; As lawyers in the corridors of the courts are already whispering: we haven’t criminalized fraud; we have criminalized heartbreak.

If you think this is only about "men's rights," you are missing the bigger picture. By refusing to make these laws gender-neutral, the BNS has also effectively abandoned the transgender and non-binary community. If a trans man is assaulted or a non-binary person faces domestic cruelty, the BNS offers them nothing but silence. We have created a "Progressive Code" that is blind to the very identities we claim to protect. I do not argue for the dilution of women's safety. A shield that is only given to one half of the room eventually becomes a wall that excludes the rest. True gender justice is not a zero-sum game. Making the law gender-neutral doesn't take away a woman's right to safety; it adds a man's right to dignity. It ensures that when a woman does cry for help, she is believed instantly - because the "noise" of misused laws has been silenced by proper safeguards.

I wish to ask if the Bharatiya Nyaya Sanhita (BNS) is the “what” of our legal system, the Bharatiya Nagarik Suraksha Sanhita (BNSS) is the “how”- and frankly, the “how” is currently a mess. It is in the machinery of procedure that the sidelining of men shifts from a theoretical debate into a full-blown human rights crisis.

We’ve been sold a narrative of modernization. We have e-FIRs and digital evidence now, but we’ve paired them with a procedural bias that effectively treats an accused man as a second-class citizen before the first witness even takes the stand. We’ve built a high-tech courtroom, but kept the medieval gallows.

### **The “Arrest First, Ask Later” Trap**

Despite the Supreme Court’s exhaustion in shouting from the rooftops -- specifically through the Arnesh Kumar guidelines<sup>8</sup> - the ground reality in 2026 is still stuck in the mud. The BNSS has actually expanded police custody limits, potentially stretching them to 60 or 90 days<sup>9</sup>. In a system where the “Victim” is defined by gender rather than evidence, this is a nuclear option.

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<sup>7</sup> Writ Petition filed in Allahabad High Court by petitioners Neelesh Ramchandnani, father and anr.

<sup>8</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

<sup>9</sup> Section 187, Bharatiya Nagarik Suraksha Sanhita, 2023

When a woman files a complaint under Section 85 for cruelty or Section 69 for a “false promise,” the police station becomes a pressure cooker. Officers feel a desperate “social obligation” to arrest first and investigate later just to prove they aren’t “anti-woman.” The result? A man loses his job, his sanity, and his reputation during three months of custody, only for a magistrate to realize two years later that the FIR was actually a pawn in a property dispute.

### **Global Jurisprudence: Busting the Myth of “Dilution”**

The loudest argument against gender-neutrality is that it will “dilute” the protection of women. This is a ghost story told to keep us from moving forward. Look at the global map. Countries like the Canada, and Australia <sup>10</sup>ditched gender-locked rape and domestic violence laws years ago.

In the UK’s Sexual Offences Act 2003<sup>11</sup> The law doesn’t care about the biology of the survivor; it cares about the violation of consent. Interestingly, conviction rates for crimes against women in these countries didn’t drop; they stabilized. Why? Because when you strip away the identity politics, the court can actually focus on the evidence. The “noise” of tactical, false cases is filtered out because the law is framed around a universal human right, not a gendered handout.

### **The LGBTQ+ Erasure**

If you want to see the true cost of this “Woman-Victim” obsession, look at the people we’ve left in the dark. We spent years fighting to decriminalize Section 377<sup>12</sup> of the IPC, 1860, yet the BNS has effectively re-erased the victims.

If a gay man is sexually assaulted tonight, he has no “Rape” section to turn to. If a trans woman is harassed by a partner, she finds herself in a legal no-man’s land. By clutching onto this 19<sup>th</sup>-century binary, the Indian legislature has abandoned the most vulnerable among us. We’ve built a “modern” code that is functionally blind to anyone who doesn’t fit a Victorian checkbox.

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<sup>10</sup> *Criminal Code of Canada, R.S.C., 1985, c. C-46; Crimes Act 1900 (Australia)*

<sup>11</sup> *Sexual Offences Act 2003, c. 42 ( United Kingdom)*

<sup>12</sup> *Section 377 of the Indian Penal Code, 1860, a British-era Law that criminalised “carnal intercourse against the order of nature”*

## The Collateral Damage

We often hear the cliché that “Justice Delayed is Justice Denied,” but in the trenches of Indian gender litigation, that’s only half the story. The real tragedy is that the process itself has become the punishment. The moment a man’s name is linked to an FIR under Section 85 (Cruelty) or Section 69 (Deceitful Sex), his life doesn’t just slow down - it hits a brick wall. In the eyes of the neighbourhood, the local HR department, and the WhatsApp university, he’s already been convicted. And the BNS, for all its “modern” posturing, doesn’t offer him so much as a band-aid for the social death that follows.

Let’s look at the reality that the Law Commission reports usually skip over: the sheer, brutal economics of an allegation. In 2026, corporate India has become hyper-allergic to controversy. The second a “First Information Report” is registered, the corporate “Internal Complaints Committee” (ICC) often goes into panic mode. The man is placed on “indefinite leave,” or more likely, “advised” to resign for the sake of the company’s image.

By the time he’s acquitted five or six years later - with a judge finally admitting the case was a tactical fabrication - the man is an economic ghost. He’s lost his peak earning years, his savings are a memory thanks to legal fees, and his professional reputation is in the gutter. Where is the “Nyaya” in the Nyaya Sanhita for him? The law provides a “Victim Compensation Scheme” for the accuser, but it offers nothing but a cold “not guilty” to the man whose entire career was executed on the basis of a lie. We’ve built a system where a single piece of paper can act as a financial guillotine.

If you sit in a family court in 2026, you’ll notice a pattern that feels less like law and more like a hostage situation. It’s rarely just the husband in the crosshairs. It’s the 70-year-old mother who can barely walk, the sister living three states away, and sometimes even the distant cousin who hasn’t spoken to the couple in years.

Practitioners call this “Net-Throwing.” By naming the entire family in a cruelty case, the complainant gains massive, unfair leverage in divorce settlements. The BNS preserves the vague definition of “Cruelty,” allowing the legal system to be used as a blunt instrument to terrorize elderly parents. The psychological toll on a father who spent his life building a reputation, only to see it dragged through a police station in his twilight years, is a form of state-sanctioned harassment. We aren’t just sidelining men; we are dismantling the Indian

family unit under the guise of “protection.”

### **The Perjury Epidemic and the Truth Deficit**

Why do people lie to the police? Because in India, it’s a zero-risk gamble. In 2026, the risk-to-reward ratio for filing a false FIR is laughably skewed. If the lie works, you get a fat settlement. If it fails, you walk away with zero consequences.

The Bharatiya Sakshya Adhiniyam (BSA) has been touted for its digital savvy, but it hasn’t done a thing to address the Truth Deficit. While Section 227 of the BNS technically punishes “False Evidence,” when was the last time you saw a court actually jail a complainant for perjury in a matrimonial case? It almost never happens. We’ve developed a “soft spot” for complainants, fearing that punishing a few liars might scare off “genuine” victims. But that’s a dangerous fallacy. By refusing to prune the garden of its weeds, we’re making the system so untrustworthy that the “genuine” victims are being buried under a mountain of fake ones.

We need to talk about the data that everyone is too uncomfortable to put on a slide deck. According to the 2024-25 mental health audits, the average rate of clinical depression and suicidal ideation among men trapped in contested, gender-specific litigation is nearly four times higher than the national average.

When the law tells a man he is a “perpetrator by default,” and his society tells him to “man up” while his dignity is being shredded, he breaks. By sidelining men from the protection of the law, we aren’t just creating a legal imbalance; we are fueling a public health crisis. A gender-neutral law would allow a man to walk into a station and say, “I am being harassed,” giving him a constructive legal path rather than a terminal, desperate one.

Justice isn’t a zero-sum game. You don’t make women safer by making men disposable. You make everyone safer by making the law honest.

Let me tell you about a case that still haunts me. A girl and a boy - seventeen and nineteen. They weren’t criminals; they were in love. They eloped, fleeing the suffocating weight of family expectations. When the family finally tracked them down, the law didn’t see a young couple looking for a future; it saw a “Kidnapper” and a “Victim.”

Because she was a few months shy of eighteen, her consent was legally invisible. The boy was slapped with POCSO and Kidnapping charges.<sup>13</sup> The system didn't care that she stood in that courtroom and shouted that she went with him of her own free will. The law looked at her and said, "You are too young to choose, but we are old enough to ruin your life and his." This is the cruelty of a rigid, gendered binary. We've built a system that treats teenage romance as a heinous crime, while turning a blind eye to the actual predators who hide behind the chaos of these "tactical" cases.

India's legal isolationism is becoming a liability. We take a strange, stubborn pride in our "sovereign" laws, but we're ignoring a global shift toward universal neutrality that has been battle-tested in societies far more complex than ours. When you look at the UK, Canada, or Singapore, you don't see a "dilution" of women's rights. You see a legal system that has finally reached adulthood.

### **The "Symmetry of Justice"**

Critics in Parliament love to say: "India is different; our women are more vulnerable." It's a convenient shield, but a lazy one. Look at the UK's Sexual Offences Act 2003. They ditched gender-locked definitions nearly a quarter-century ago. Did it make women less safe? Not a chance. It allowed the law to focus on the act of violation itself, regardless of who held the power.

In Canada, "Sexual Assault" isn't a gendered term; it's a criminal one. By contrast, our BNS is still obsessed with biology. We are telling the world that Indian men are biologically incapable of being victims and Indian women are biologically incapable of being aggressors. It's a 19<sup>th</sup>-century mindset trying to govern a 21<sup>st</sup> century superpower.

We don't need to burn the BNS. We just need to find its soul. These are the three non-negotiable pivots for the 2027 Law Commission:

1. Linguistic Honesty: Replace "Any Woman" with "Any Person" across Sections 63 to 99. This extends the shield to every citizen. It makes the law Survivor-Centric, not Gender locked.

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<sup>13</sup> *Protection of Children from Sexual Offences(POCSO) Act, 2012; Section 137, Bharatiya Nyaya Sanhita, 2023*

2. The Statutory Arnesh Kumar Filter: We have to stop expecting the Supreme Court to clean up the legislature's mess. Section 173 of the BNSS must be amended to mandate a "Preliminary Enquiry" for all non-heinous gender related crimes. If there's no physical evidence, a 14 day inquiry must be mandatory before an arrest.
3. The Cost of Malice: "We need Statutory costs for Malicious Prosecution." If a case was filed to extort or gain leverage in a divorce, the complainant should pay the legal fees and compensation. Justice needs a price tag for those who wish to buy it with lies.

## Conclusion

Close your eyes. Forget the dusty files and the sterile, robotic language of the BNS. Imagine, instead, a country where the law doesn't look at your gender before it looks at your wounds.

Imagine a police station where the "Duty Officer" isn't a gatekeeper of gendered scripts, but a facilitator of truth. In this country, when a citizen walks in with a grievance, a sophisticated "Truth-Symmetry" system is triggered. Before a single arrest warrant is signed, forensic data and analytics have filtered the noise from the signal.

In this India, the victim doesn't have to repeat their trauma to ten different indifferent men. Their story is recorded once, preserved in an immutable digital vault. But here is the radical part: the law is so precise that it identifies the real culprit with the accuracy of a scalpel. There is no "Net-Throwing." No 70-year-old grandmothers being dragged into courtrooms as "tactical leverage."

Trials don't last decades; they last weeks. The "tactical" cases - the 85% of "Cruelty" cases that currently clog our pipes - simply vanish. This isn't a utopia. It's simply what happens when a nation decides that Human Dignity is more important than Gender Identity.

The bruised man at the desk, the battered woman in the shelter, and the eloped teenager in the courtroom are not rivals for the law's attention. In a perfect system, they are the same person: a citizen in pain. And until our laws recognize that, we aren't just delaying justice - we are denying our own humanity.