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Gender-Neutral Rape Laws in India: Need of the Hour

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The right to equality is the fundamental pillar of democratic societies, and Article 14 of the Indian Constitution talks about equality. However, gender discrimination continues to be a prevalent issue in India regardless of which gender it is. India's rape laws were primarily designed with a gender-specific approach, recognizing only women as victims and men as perpetrators. In the past, the patriarchal feeling of men led to crime and violence against women. However, as time changes, we must understand that crimes against men and other genders need to be recognised, as it creates a gap in our legal system, Justice, and our fundamental rights of equality. In the new era, when individuals are evolving to choose how they want to be identified based on gender other than the two traditionally known binary genders, laws need to bring them under the umbrella of justice to ensure fairness and inclusivity and to stop the culprits from misusing the law. LGBTQIA+ individuals, especially transgender, often face sexual violence but remain excluded from legal protection due to heteronormative laws. To truly uphold the principle of equality enshrined in Article 14, rape laws must be inclusive of all gender identities and sexual orientations. This project critically examines the biases in Indian rape laws and their impact on different genders that calls for an urgent reformation.

Keywords: equality, rape, men, lgbtqia+, reformation.

INTRODUCTION

Indian rape laws adopt a victim-centric approach, aiming to protect the victim's dignity and ensure they do not experience additional trauma while seeking justice.¹ The traditional conception of rape has assumed a woman as the victim and a man as the perpetrator. This approach acknowledges the historically marginalised position of sexual assault survivors, particularly women, in seeking justice. While the victim-centric approach is beneficial, it has led to an unintended consequence, where women misuse these laws and also exclude other vulnerable groups, such as men, transgender, and non-binary individuals, from legal protection. While these laws are essential in combating gender-based violence, they also come with several drawbacks. The discriminatory character of India's rape laws, which ignore the fact that sexual violence does not only affect women, is one of the main issues. Going with the presumption that only men can commit crimes and only women can be victims; the current legal system is still primarily heteronormative.

Consequently, victims of sexual assault who are male, transgender, or non-binary lack sufficient legal protection in India. Furthermore, there have been cases where false accusations have been used as a weapon for personal grudges or other reasons, raising concerns about the potential for abuse of these laws.²

Regularly, many fake rape charges are filed in India. For example, in *Tilak Raj v State of Himachal Pradesh*,³ and *Raghuvinder Harna v State of NCT of Delhi*,⁴ fake charges of rape were filed against men by women, which causes emotional distress to the accused because the mark of abuse remains with him for the rest of his life and, society continues to view him as a perpetrator, though he is acquitted. However, in *Rakesh v State of NCT of Delhi & Anr*, the Court observed that the mere possibility of misuse could not justify withholding legislation or judicial application, as such laws aim to address offences and deliver justice to genuine victims.⁵ The judgment emphasised that the potential for abuse should not serve as

¹ Adv. Nikunj Kulshreshtha 'Gender-neutral rape laws: A need for Indian society' (*iPleaders*, 05 November 2019) <<https://blog.ipleaders.in/rape-sexual-assault-law-india-gender-neutral/>> accessed 13 March 2025

² 'Gender biased laws in India by Avinash Singh & Shatakshi Srivastava' <<https://www.mylawman.co.in/2021/06/legal-article-gender-biased-laws-in.html>> accessed 18 March 2025

³ *Tilak Raj v State of Himachal Pradesh* (2016) 4 SCC 140

⁴ *Raghuvinder Harna v State of NCT of Delhi* Crim App No 1177/2011

⁵ *Rakesh Kumar v State of NCT of Delhi & Anr* (2019) SCC OnLine Del 7416

a reason to invalidate or disregard legal provisions. However, it should address the issue through proper safeguards and judicial scrutiny.

In contrast to the above acts, the Protection of Children from Sexual Offences (POCSO) Act, 2012 provides a gender-neutral framework to address and punish sexual crimes against children under 18 years of age. Unlike adult rape laws, POCSO does not assume the gender of the victim or perpetrator, thereby extending legal safeguards to all children, including boys, girls, and transgender minors alike. This inclusivity represents a progressive advancement in child protection law by acknowledging that sexual abuse can affect children of any gender. However, once a survivor turns 18, these protections cease to apply, and the adult rape laws, which remain gender-biased, take over. This situation creates a glaring gap in protection for adult male and LGBTQIA+ survivors, emphasising the need for similarly inclusive reforms in adult sexual violence laws.

The World Health Organisation (WHO) estimates that 12-16% of men around the world are victims of rape and have a history of sexual abuse during childhood.⁶ The 172nd Law Commission Report has proposed to make unbiased rape laws protecting all genders.⁷ Transgender Community has been consistently molested and charged under the uniform of Section 377 of the IPC.

The Justice Verma Committee report of the year 2013 stated that since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same.⁸ Moreover, because these problems are not thoroughly researched and analysed, men's sexual assault and abuse do not receive the attention they require. Therefore, the recurring abuses against all genders and the recommendations of the law commission call for a legal framework that ensures justice for all individuals regardless of their gender identity.

⁶ Ishita Mittal, 'Gender Biased Punishments under IPC' (2023) 3(3) Jus Corpus Law Journal <<https://www.juscorpus.com/wp-content/uploads/2023/03/10.-Ishita-Mittal.pdf>> accessed 18 March 2025

⁷ 'Gender Neutrality in Rape Laws' (*Brillopedia*, 02 July 2021) <<https://www.brillopedia.net/post/gender-neutrality-in-rape-law>> accessed 18 March 2025

⁸ *Ibid*

LAWS DEALING WITH RAPE AND SEXUAL ASSAULT

Indian rape laws, primarily codified under the Indian Penal Code (hereinafter IPC). Section 375 of the IPC defines rape as: 'A man is said to commit rape if he engages in non-consensual sexual intercourse against a woman.'⁹ This framing portrays that rape as an act can be committed exclusively by a man against a woman under certain coercive or non-consensual circumstances, thereby excluding male and non-binary victims, as well as non-male perpetrators.¹⁰ Although individuals of all genders may experience these circumstances, the current law recognizes only women as victims, with the change in the IPC and now referred to as Bharatiya Nyaya Sanhita (hereinafter BNS), the rape provision replaced by Section 63. It expands the definition of acts constituting rape to include penetration of the vagina, urethra, anus, or mouth with a penis; insertion of objects or other body parts; and oral acts.¹¹

However, it still explicitly defines the perpetrator as a man and the victim as a woman. The expanded definition continues to exclude members of the LGBTQ+ community. For instance, Sec 63 (a) of BNS describes penetration with a penis which is anatomically not possible by certain individuals within the community.¹² Due to this loophole if there is any rape committed by a person or persons belonging to the LGBTQIA+ community they cannot be held liable for rape, and this would lead to injustice towards the victim.

Whereas the offences of insertion of any objects into the private parts of women; or manipulation; or placing the mouth on private parts of women.¹³ Such actions, which also amount to rape, are not limited to men and are possible to be committed by other genders of society, including women. Would it mean that a woman sexually assaulted by another woman does not amount to rape, and if the answer is yes, how would justice be provided to the victim in such a situation?

The answer is a yes as it is not considered rape under Indian law. As a result, if a woman sexually assaults another woman, Indian law does not classify it as rape. The only available

⁹ Indian Penal Code 1860, s 375

¹⁰ *Ibid*

¹¹ Bharatiya Nyaya Sanhita 2023, s 63

¹² Bharatiya Nyaya Sanhita 2023, s 63(a)

¹³ Bharatiya Nyaya Sanhita 2023, s 63(b), (c) & (d)

recourse for such survivors lies under other sections of the IPC that punish the offences, such as:

- **Section 354:** Physically attacking or using force on a woman with the intent to insult or violate her dignity.¹⁴
- **Section 355:** Using force or attacking someone to insult or humiliate them, other than on grave provocation.¹⁵
- **Section 376AB:** Punishment for rape on a woman if the woman is under twelve years of age.¹⁶
- **Section 376C:** Sexual intercourse by someone in a position of power, taking advantage of their authority over the victim.¹⁷
- **Section 377:** Punishment is given when an act leads to the victim's death or leaves them in a permanent, unconscious, and unresponsive state.¹⁸

While these sections do not carry the same punishment or gravity as the rape laws, they still allow the survivor to seek legal recourse and punishment for the offender.

THE JOURNEY OF SECTION 377 AND THE EXCLUSION OF LGBTQIA+ RIGHTS IN INDIA'S LEGAL FRAMEWORK

British India introduced Section 377 of the IPC, which deals with unnatural offences and punishes the act of voluntary carnal intercourse against the order of nature. The section reads as follows: *“Anyone who willingly engages in sexual intercourse that is considered unnatural, whether with a man, woman, or animal, can be punished with life imprisonment or imprisonment for up to ten years, along with a fine...”*¹⁹

Distinction from Section 376: Section 376 of the IPC, which addresses the rape committed against a woman by a man, section 377 of the IPC has extended the recognition to the sexual assault against a man by any other person irrespective of gender. Moreover, the wording of

¹⁴ Indian Penal Code 1860, s 354

¹⁵ Indian Penal Code 1860, s 355

¹⁶ Indian Penal Code 1860, s 376AB

¹⁷ Indian Penal Code 1860, S 376C

¹⁸ Indian Penal Code 1860, s 377

¹⁹ *Ibid*

section 377 criminalises the voluntary sexual intercourse deemed against the order of nature, blurring the distinction between consensual and non-consensual acts.

Discrimination Faced by the LGBTQIA+ Community: The LGBTQIA+ communities in India have always faced systematic discrimination and harmful stereotypes. However, the Indian judiciary took a progressive step in the case *Navtej Singh Johar v UOI* (2018)²⁰ by decriminalising consensual same-sex relationships. The Supreme Court struck down Section 377 of the IPC, which previously criminalised gay sex between consenting adults. In this landmark judgment, the Court has upheld the fundamental rights, dignity, and privacy of the LGBTQIA+ community. The Court has observed that by criminalising consensual sexual intercourse, the provision violates the right to dignity, privacy, and sexual autonomy under Article 21, freedom of expression under Article 19, the right to equality under Article 14, and non-discrimination under Article 15 of the Constitution.

Consequently, section 377 will only criminalise non-consensual sexual offences that are treated to be unnatural offences under this code. However, in 2023, the new BNS replaced the IPC by decolonising criminal laws. It has completely removed the provision under section 377 that dealt with the protection given to a man and LGBTQIA+ communities against rape.²¹ While the legislature took proactive efforts for gender-neutral definition and equal rights efforts in BNS, it failed to recognise the increasing sexual offences against all genders. Instead of progressing with the evolving societal and judicial outlook, the BNS marks a regressive shift by undoing the judiciary's efforts in upholding equality and inclusivity.

By reversing progressive interpretations and narrowing protections, it risks dismantling the proactive steps taken under the previous legal framework. A just legal system must evolve forward and not backwards, ensuring it safeguards constitutional values rather than eroding them.

²⁰ *Navtej Singh Johar & Ors v Union of India* (2018) 10 SCC 1

²¹ Nihit Nagpal and Lakshit Rajdev, 'New criminal laws legalize male rape in India' (*International Bar Association*, 24 September 2024) <<https://www.ibanet.org/new-criminal-laws-legalise-male-rape-in-India>> accessed 15 March 2025

INEQUITY IN PUNISHMENT: TRANSGENDER PERSONS AND SECTION 18 OF THE TRANSGENDER BILL

Even though Section 18 of the Transgender bill deals with sexual abuse and grants punishment ranging from 6 months to 2 years, it is nowhere close to the rigorous punishment under Sec 377 of the IPC, which ranges from 10 years to life imprisonment.²² How can the sexual abuse of a transgender person or a man be considered any less serious than the rape of a woman? Therefore, the equality and dignity questions persist. Even during the training sessions for BNS, it was reported that the trainers were not informed as to how to deal with situations where men and LGBTQIA+ are victims of rape cases.²³

Therefore, though the decriminalisation of consensual same-sex relationships was a progressive approach, the enactment of BNS has taken a regressive approach, making the other genders remain excluded, thereby not sufficiently safeguarding them against sexual assault. Furthermore, the current legal definition of rape under section 63 of BNS remains heteronormative, thus excluding male, transgender, and non-binary victims from legal recourse and justice.²⁴ Without inclusive rape laws, institutional discrimination persists, rendering many a victim without legal recourse. The judiciary must continue to be reformist in its approach so that, before further damage is caused, the law evolves to safeguard all persons equally, regardless of gender or sexual orientation.

In contrast, countries like the United States have adopted a gender-neutral definition of rape under Chapter 109A of the United States Code, ensuring that sexual offenses committed by any person against any person, without consent, are criminalized.²⁵ The Indian judiciary must adopt a similarly reformist approach to ensure equal protection for all individuals, irrespective of gender or sexual orientation.

²² Alisha Dutta, 'Bharatiya Nyaya Sanhita has no section dealing with rape of men, transgender persons' *The Hindu* (23 June 2024) <<https://www.thehindu.com/news/national/gang-rape-of-up-man-highlights-need-for-section-377-in-bns-bill/article68320575.ece>> accessed 17 March 2025

²³ *Ibid*

²⁴ Bharatiya Nyaya Sanhita 2023, s 63

²⁵ Nagpal (n 21)

POCSO ACT 2012

Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012 (Hereinafter POCSO) defines 'child' as any person below the age of 18 years.²⁶ This law does not qualify the gender of the child but uses a neutral word, which is 'person'. It protects any child against sexual offences regardless of their gender, thereby ensuring equal protection for all. POCSO Act focuses on the dignity of the child and privacy of the child, which need to be maintained by the Court throughout the judicial process.²⁷

In the case, *Rakesh v State of NCT of Delhi & Anr.*, the Delhi High Court held that the POCSO Act is a gender-neutral law as it treats every victim equally as far as the victim is a child. It further observed that the legislation protects every child from crimes such as sexual harassment, sexual assault, and pornography, thereby imposing capital punishment for cases of penetrative sexual assault and aggravated penetrative sexual assault.

In another judgment, in the case of *Sundari Gautam v State of NCT of Delhi*, the Delhi High Court held that under Section 3 of the POCSO Act, the pronoun 'he' must be read as any individual who commits the offence irrespective of gender. Therefore, the act governs all offenders equally, irrespective of gender.²⁸ The Court further held that the act uses 'person', indicating that the offences under Sections 3 and 5 of the POCSO Act apply to both genders.

However, the Court only mentions men and women. Though it is a progressive approach, mentioning 'both' genders rather than all genders is concerning. However, it is hopeful that the courts are taking a progressive legal approach by interpreting laws for a progressive society.

In a landmark judgment of *Ms. Eera through Dr. Manjula Krippendorf v State*, the issue was whether a person who has attained the age of 18 years but has a 'mental age' equivalent to that of a child or is severely intellectually challenged can be considered a 'child' under the POCSO Act.²⁹ The Court, however, upheld the legislative intent of setting a strict age limit, emphasising the doctrine of separation of powers and refraining from judicial overreach. In

²⁶ Protection of Children from Sexual Offences Act 2012, s 2(1)(d)

²⁷ Protection of Children from Sexual Offences Act 2012, s 33(7) & 39

²⁸ *Sundari Gautam v State of NCT of Delhi* (2024) SCC OnLine Del 5412

²⁹ *Ms. Eera through Dr. Manjula Krippendorf v State (Govt. of NCT of Delhi) & Anr* (2017) 15 SCC 133

one of the recent judgements, after the intervention of the Bachpan Bachao Andolan, a male child was awarded 6 lakhs, thereby setting a precedent to protect any child equally.³⁰

The POCSO Act has even criminalized marital rape of children below 18 years, unlike the provisions of IPC. In *Independent Thought v Union of India* (2017),³¹ The Supreme Court criminalized marital rape of a minor wife under the age of 18, but adult women remain unprotected under the law. Section 63 exception 2 of the BNS still maintains exception 2 of the IPC with a change in the age limit from 15 years to 18 years that reads as follows - “Exception 2.-Sexual intercourse or sexual acts by a man with his wife, the wife not being under eighteen years of age, is not rape.”³² Thereby persisting the decriminalizing of marital rape above 18 years even after decolonizing the laws.

In the case, *M. Veeraswamy v State of Tamil Nadu*, the Supreme Court has observed that child sexual abuse happens because the system of silence around the act perpetuates it.³³ The same logic applies to male and LGBTQIA+ victims, whose experiences of sexual violence remain largely ignored by the legal system. Without legal recognition, the cycle of abuse and institutional neglect continues, leaving many without access to justice.

MARITAL RAPE: THE SILENT INJUSTICE IN OUR LAWS

Rape laws in India still consider marital rape as an exemption to rape³⁴. The idea that a husband cannot be held legally responsible for forcing sex upon his wife reflects a deeply outdated belief that marriage automatically implies permanent consent or access to intercourse without permission from their spouse. This exception strips women of their right to bodily autonomy within marriage and reinforces harmful notions that once married, a woman loses the ability to say no. More disturbingly, this legal gap fails to acknowledge the trauma and pain experienced by countless women who are sexually violated by their spouses but left without any legal remedy simply because they are married.

³⁰ ‘HC awards compensation to 6-year-old sexual assault victim, says the system cannot ‘undo’ offence’ *India Today* (27 May 2021) <<https://www.indiatoday.in/india/story/hc-awards-compensation-to-6-year-old-sexual-assault-victim-says-system-cannot-undo-offence-1807255-2021-05-26>> accessed 17 March 2025

³¹ *Independent Thought v Union of India & Anr* (2017) 10 SCC 800

³² Bharatiya Nyaya Sanhita 2023, s 63

³³ *M. Veeraswamy v State of Tamil Nadu* (1991) 3 SCC 655

³⁴ Indian Penal Code 1860, s 375(2)

This issue is not just about gender but also about human dignity. Our laws must recognise that consent does not dissolve with marriage and that every person, regardless of gender or relationship status, deserves protection from sexual violence. True gender-neutral laws must confront this blind spot. Including marital rape within the legal definition of rape is not an attack on the institution of marriage, but a call to make it more respectful, safe, and based on mutual consent. Only then can we begin to build a just and inclusive legal system that protects all individuals equally.

Over the years, activists and organisations have challenged this regressive stance. The Justice Verma Committee Report (2013), constituted in the aftermath of the Nirbhaya case, strongly recommended to remove the exception for marital rape. The committee argued that marriage should not be a license for sexual violence and that consent must be respected regardless of the relationship between the parties.³⁵ Similarly, the 172nd Law Commission Report also recognized the need to criminalize marital rape, calling for a shift in focus from the relationship between the accused and the victim to the nature of the act itself.

Despite these recommendations, successive governments have hesitated to reform this area of law, often citing cultural sensitivities and the sanctity of marriage. However, continuing to uphold this exception directly contradicts the principles of equality, dignity, and bodily autonomy enshrined in the Indian Constitution. It also undermines the broader goal of making rape laws gender-neutral and inclusive.

POST-RAPE TRAUMA: SURVIVORS' STRUGGLES AND RECOVERY

Rape affects the victim in two ways. First is the trauma of the rape itself, and second is the subsequent trial. As also stated in the 84th Law Commission report, it firstly wounds her dignity, individuality, and sense of security, and may also ruin her physically, and secondly forces the victim to re-live the traumatic experience.³⁶ But the question is, are these experiences only connected to one gender of society? The answer is no.

According to a study of 1982 published in the National Library of Medicine, the researchers noted psychological distress, post-trauma reactions, and impaired sexual functioning in men

³⁵ Justice Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013)

³⁶ *Ibid*

who are victims of rape.³⁷ Later studies found that gay men are more likely than women to have pro-victim judgments and endorse male rape falsehoods, including victim blaming.³⁸

WHY RAPES AGAINST MEN GO UNDERREPORTED?

One of the main reasons for rape cases where men are victims of not being surfaced is the fear of being judged and the existing gender-related stereotypes in society. The traditional stereotypes force men to be in a certain way, compelling them to exhibit physical and emotional strength, thereby forcing them to reach societal standards. Whenever a man is raped, he is afraid of society's judgment, which starts labelling him as a weak person, which could strip him of his perceived masculinity. Such sensitive incidents are rarely handled with caution by society, often mocking the victim by further deepening their trauma. This process not only ruins the human dignity of the man but also destroys the family's position in society, as the man is perceived to be the head or the successor of any Indian family.

Society often views the idea of a man being raped by a woman or by individuals of other genders as uncommon or unnatural, primarily because of entrenched stereotypes that portray men as strong and women as weak. As a result, such acts are frequently dismissed or considered outside the accepted social order. Therefore, a cis male victim can now be labelled as gay, which is against his right to identity and dignity and infringes his fundamental rights of right to life and personal liberty enshrined under Article 21 of the Indian Constitution.

As a result, the trauma a man experiences from revealing that he has been raped often outweighs the trauma of the assault itself, as he fears social exclusion and isolation from his community. And that being backed by no legal protection would eventually cause the victim's sufferings to go unreported.

STATISTICS OF CRIMES AGAINST MEN IN INDIA

In the 'Study on child abuse: INDIA 2007' by the Ministry of Women and Child Development, it was found that in young children of the age group of 5-12 years, 69% of

³⁷ Philip M. Sarrel M.D. and William H. Masters M.D., 'Sexual Molestation of Men by Women - Archives of Sexual Behavior' (1982) 11(2) Archives of Sexual Behavior
<<https://link.springer.com/article/10.1007/BF01541979>> accessed 17 March 2025

³⁸ *Ibid*

children were physically abused in 13 sample states, out of which 54.68% were boys.³⁹ Although rape laws concerning children have become significantly more inclusive by adopting a gender-neutral framework, similar progress has not been achieved in the context of adult victims, where efforts to extend the same inclusivity have largely been unsuccessful.

It is also hard to obtain statistics on males being a victim of rape or physical abuse in India. Due to laws not being gender-neutral, the cases go unreported or unaddressed. Available limited literature in India indicates that the prevalence of spousal violence against men exists, and a considerable proportion of men experience spousal violence.

The survey conducted on 1000 married men has revealed that 51.5 percent of men are subjected to torture or abuse by their spouses or partners at least once in their lifetime⁴⁰, and among that 0.4% of male undergo sexual abuse by their partners. Indian wives rank third in the world for beating their husbands.⁴¹ It is imperative that the crimes against men, including sexual assault and rape, exist, but the same are not protected under Indian laws. Furthermore, section 498A of IPC nor any other law addresses the domestic abuse of men and does not provide the most basic relief for men.⁴²

Moreover, in *Sushil Kumar Sharma v Union of India*, the Apex court observed that the suits filed under section 498A are being brought more out of personal animosity than for valid reasons.⁴³ These statistics indicate how women have severely misused and manipulated this provision for their benefit.

³⁹ Loveleen Kacker, *Study on Child Abuse: INDIA 2007* (Ministry of Women and Child Development, Government of India 2007)

⁴⁰ Dr. Pankaj Bhardwaj, 'Indian Journal of Community Medicine' (2025) 50(3) Indian Journal of Community Medicine <<https://journals.lww.com/ijcm/pages/default.aspx>> accessed 15 March 2025

⁴¹ Anupam Dubey, 'Wives in proclaimed 'most dangerous country for women are the 3rd in the world for beating' (*Daaman*, 29 June 2018) <<https://www.daaman.org/post/wives-in-the-proclaimed-most-dangerous-country-for-women-are-the-3rd-in-the-world-for-beating-husban#:~:text=Egypt%20has%20claimed%20the%20first,India%20was%20on%20number%20three>> accessed 15 March 2025

⁴² Aditya Pandey, '9 eye-opening statistics about domestic violence against Indian men' (*Mensxp*, 02 June 2022) <<https://www.mensxp.com/special-features/features/108932-domestic-violence-cases-on-indian-men-facts-and-statistics.html>> accessed 16 March 2025

⁴³ *Sushil Kumar Sharma v Union of India and Ors* AIR 2005 SC 3100

COMPARATIVE PERSPECTIVE WITH OTHER COUNTRIES

Around seventy-seven countries have established and accepted gender-neutral laws, including the USA, UK, Australia, and Denmark.⁴⁴ Sexual assault laws have evolved to be gender-neutral, ensuring comprehensive protection for all individuals. In the United States, most states have adopted such statutes, recognizing that rape can be perpetrated against anyone, irrespective of gender, including instances involving female offenders.

Similarly, the United Kingdom's Sexual Offences Act 2003 provides gender-neutral definitions of rape, encompassing all individuals and our neighbouring country Nepal recognizes rape against men and transgender individuals, offering broader legal protection in the year 2017. In Australia, gender-neutral rape laws are primarily governed by the Crimes Act 1900 (specific to New South Wales) and similar legislation in other states and territories, and the law applies to all individuals, regardless of gender, providing equal protection under the law.

Although India brought a change in 2018 by decriminalising sexual intercourse between consensual adults, we also have to look after more sensitive and unspoken crimes in society. We also have to make laws protecting the interests of the individuals instead of treating the person as a taboo subject. Indian laws need to move beyond the fear of misuse or the dilution of protections for women and stop dismissing the issue as insignificant. Additionally, the law fails to account for false accusations, which can have severe consequences for the accused. Therefore, it is essential to take the necessary steps to ensure that every individual receives their rightful legal protection, regardless of gender.

CONCLUSION

The current legal framework of rape in India, i.e. Section 63 of BNS is gender-biased and overlooks male and transgender survivors of sexual assault. The Transgender Persons (Protection of Rights) Act itself does not have stringent provisions for effectively curbing sexual offences against transgender communities. The legal provision of marital rape under Exception 2 of Section 63 also reinforces gender-based inequalities. The absence of holistic training modules for law enforcers and judicial authorities also contributes to ineffective case

⁴⁴ Anushka Yadav, 'Gender Neutrality of Rape Laws' (2021) 4(4) International Journal of Law Management and Humanities <<https://doi.org/10.1000/IJLMH.111604>> accessed 18 March 2025

handling in the case of LGBTQIA+ survivors. All these loopholes in the law not only exclude a vast number of survivors but also justify a legal system that is devoid of equal protection for all.

To effectively address these prevalent problems, it is essential to revise BNS Section 63 to take a gender-neutral stance, thereby guaranteeing equal legal protection to all, as is the case in the model of the Protection of Children from Sexual Offences (POCSO) Act. Mandatory sensitisation training for law enforcement officials and judicial personnel must be provided to ensure equitable and impartial treatment of LGBTQIA+ survivors. Moreover, countrywide large-scale awareness campaigns must be launched to inform society about the realities of sexual violence against men and the LGBTQIA+ community so that stigma can be reduced and justice can be ensured.

The omission of LGBTQIA+ individuals from Indian rape law reflects a more profound problem of both legal and social invisibility. For a justice system to be truly inclusive, it must see all survivors and offer equal protection within the system. Gender-neutralization of rape law, greater protection of trans-individuals, and raising awareness at all levels of the justice system are essential steps toward the establishment of a just and equitable legal system. These deficiencies, remedied, will not only make legal protections stronger within India but also assist in the development of a society that is centred on justice, equality, and respect for all sexual violence victims.