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The Hierarchy of Victimhood: Statutory Inertia and Non-Female Erasure under the BNS

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*To view the crime of sexual violence exclusively as a male perpetrator violating a female victim is an injustice to those whose stories do not fit this rigid paradigm. This paper evaluates the systemic underreporting, profound social stigma, and institutional barriers to justice experienced by male and LGBTQ+ survivors of sexual harassment and molestation in India. Utilising a qualitative socio-legal methodology, this study examines the historic transition from the Indian Penal Code (IPC), 1860, to the Bharatiya Nyaya Sanhita (BNS), 2023, critiquing the legislative choice to retain gender-asymmetric definitions of sexual assault under Section 63 of the BNS. By analysing landmark constitutional jurisprudence, including *Naz Foundation* and *Navej Singh Johar*, alongside secondary data from the National Crime Records Bureau (NCRB) and human rights advocacy reports, the article maps how non-female survivors are left in a legal and psychosocial vacuum. The findings highlight how heteronormative societal expectations and rigid statutory architectures actively perpetuate an unequal hierarchy of victimhood. Ultimately, this research advocates for a comprehensive, intersectional, and gender-neutral overhaul of Indian primary criminal statutes to guarantee equal protection under the law for all survivors, irrespective of gender identity or sexual orientation.*

Keywords: *gender neutrality, male victimisation, socio-legal jurisprudence.*

INTRODUCTION

The contemporary discourse surrounding sexual violence is historically and structurally anchored in a binary paradigm that views the commission of sexual assault exclusively through a gender-asymmetric lens: a male perpetrator violating a female victim. While this framework emerged from vital feminist critiques aimed at addressing the pervasive and disproportionate victimisation of women within patriarchal structures, its rigid institutionalisation has inadvertently generated significant statutory blind spots. Specifically, male and LGBTQ+ survivors of sexual harassment and non-consensual sexual victimisation occupy a profound legal and academic vacuum. These underserved demographics face distinct socio-legal challenges that remain largely marginalised in both mainstream policy debates and empirical jurisprudence. Among these challenges are intense societal stigma rooted in heteronormative expectations, a near-total absence of tailored psychosocial support infrastructures, and a systemic lack of statutory remedies. Consequently, male and queer survivors experience heightened rates of underreporting, acute institutional alienation, and profound isolation when seeking recourse within a system that fails to conceptualise them as viable victims of sexual violence.

This legislative and cultural marginalisation is further compounded by the institutional mechanics of the state apparatus. While female survivors continue to battle formidable structural barriers to justice, ranging from pervasive victim-blaming and police reluctance to systemic institutional neglect, their victimhood is at least statutorily recognised. In contrast, the experiences of men and LGBTQ+ individuals are often actively invalidated by the law itself. For male victims, gendered socialisation that equates masculinity with invulnerability creates severe internal barriers to help-seeking, a reality frequently minimised or dismissed by law enforcement officials. For LGBTQ+ cohorts, victimisation is further complicated by intersecting biases where sexual assault is frequently weaponised as a tool of corrective violence or systemic discrimination, leaving survivors vulnerable to secondary victimisation by the very state actors designed to protect them.

The historic transition from the Indian Penal Code (IPC), 1860,¹ to the Bharatiya Nyaya Sanhita (BNS), 2023,² offered a critical legislative window to modernise India's penal

¹ Indian Penal Code 1860, ss 375, 377

² Bharatiya Nyaya Sanhita 2023, s 63

architecture by adopting gender-neutral frameworks for adult survivors of sexual assault. However, the retention of gender-asymmetric definitions of rape within primary criminal statutes underscores a persistent legislative inertia. This article provides a critical socio-legal evaluation of this statutory status quo. By bypassing individual field-level demographic data collection in favour of a doctrinal and content-analytical framework, this study interrogates the systemic contradictions within Indian penal law, reviews landmark constitutional jurisprudence, and maps the institutional barriers that perpetuate an unequal hierarchy of victimhood. Ultimately, this inquiry seeks to advance the discourse on legal intersectionality, offering a theoretical roadmap toward a more inclusive jurisprudence that guarantees equal protection under the law for all survivors, irrespective of gender identity or sexual orientation.

PROBLEM STATEMENT

Despite expanding academic discourse surrounding human rights and intersectional vulnerabilities, contemporary legal frameworks in India continue to exhibit a profound structural mismatch between the changing realities of sexual victimisation and the statutory protections available to survivors. While the historic repeal of the Indian Penal Code (IPC), 1860, and the subsequent implementation of the Bharatiya Nyaya Sanhita (BNS), 2023, signalled an era of comprehensive penal reform, primary criminal provisions governing sexual assault deliberately preserved a highly gender-asymmetric and binary architecture. Under Section 63 of the BNS, the crime of rape remains statutorily defined as an offence that can exclusively be perpetrated by a male against a female victim. This rigid, heteronormative construction effectively relegates non-consensual sexual penetration and severe sexual victimisation experienced by adult male and LGBTQ+ individuals to a state of absolute statutory exclusion. By denying these demographics equal recognition under primary sexual assault laws, the state criminal justice apparatus actively constructs an unequal, institutionalised hierarchy of victimhood.

This problem is further aggravated by a severe compounding effect across social and institutional domains. Because the primary text of the law invalidates the existence of non-female adult survivors, state law enforcement machinery lacks standardised, gender-neutral operational protocols. This leads to acute institutional alienation, systemic police reluctance, and an inability to systematically document these offences under primary criminal metrics.

Furthermore, this statutory vacuum forces non-female survivors to navigate intense socio-cultural stigmas, including rigid patriarchal expectations of masculinity for male victims and intersecting queerphobic biases for LGBTQ+ cohorts without any viable legal recourse or tailored state-sponsored psychosocial support networks. Consequently, the true scale of sexual violence against these underserved demographics remains obscured by a systemic culture of enforced silence and chronic underreporting. Without a critical doctrinal evaluation of these statutory gaps and the underlying legislative inertia, the Indian legal system remains in direct tension with constitutional mandates of equality before the law and equal protection of the laws. This study addresses this critical gap by interrogating the socio-legal architectures that perpetuate this statutory vacuum.

RESEARCH METHOD

This study utilises a qualitative socio-legal research methodology, relying primarily on a combination of doctrinal legal analysis and thematic content analysis of secondary source materials. Because collecting primary, field-level demographic data from highly traumatised, legally unrecognised, or structurally marginalised cohorts introduces profound ethical vulnerabilities, institutional hurdles, and secondary trauma risks, this paper intentionally bypasses direct field-survey mechanics. Instead, the text itself serves as the primary data and empirical site of inquiry. The analytical matrix is divided into two distinct structural phases, beginning with a doctrinal and jurisprudential analysis that involves a comparative, text-critical reading of historical penal provisions against contemporary legislative overhauls. This statutory critique is further anchored by a longitudinal review of landmark constitutional jurisprudence, most notably *Naz Foundation v Government of NCT of Delhi*³ and *Navtej Singh Johar v Union of India*,⁴ to map the evolution of judicially recognised rights against persistent legislative inertia. Complementing this, a non-doctrinal content analysis is applied to aggregate, macro-level secondary data to contextualise the real-world impact of these statutory exclusions without collecting primary field data. This phase synthesises institutional data from the National Crime Records Bureau (NCRB),⁵ domestic civil society human rights documentation, and verified reports from legal advocacy groups. Through this synchronised evaluation of statutory text, judicial precedent, and institutional reporting, the

³ *Naz Foundation v Government of NCT of Delhi & Ors* (2009) 6 SCC 712

⁴ *Navtej Singh Johar and Ors v Union of India Thr Secretary, Ministry of Law and Justice* (2018) 10 SCC 1

⁵ Ministry of Home Affairs, *Crime in India 2024* (NCRB 2025)

methodology systematically uncovers the structural patterns, institutional biases, and systemic barriers to justice that perpetuate the statutory exclusion of male and LGBTQ+ survivors within the contemporary Indian criminal justice apparatus.

THE LEGISLATIVE MATRIX: FROM IPC 375/377 TO BNS SECTION 63

The evolution of Indian sexual assault jurisprudence reveals a persistent tension between progressive judicial pronouncements and deep-seated statutory inertia. Historically, the legal framework governing sexual offences was anchored in the Indian Penal Code (IPC) of 1860, where non-consensual sexual acts were bifurcated into two primary, highly flawed categories: Section 375,⁶ which codified the offence of rape, and Section 377,⁷ which criminalised ‘unnatural offences.’ Section 375 was explicitly constructed around a rigid gender-asymmetric binary, specifying that only a man could commit rape and only a woman could be the victim. Consequently, adult male and transgender survivors of non-consensual sexual violation were completely erased from the primary statutory definition of rape. The only legal avenue available to address male-on-male or male-on-transgender non-consensual sexual penetration was Section 377. However, Section 377 was an anachronistic, colonial-era provision that penalised ‘carnal intercourse against the order of nature,’ failing to distinguish between consensual same-sex relations and egregious acts of non-consensual sexual assault. This structural conflation severely compromised its utility as a protective instrument, obscuring the reality of sexual violence under the broad, moralistic paradigm of ‘sodomy’.

The constitutional landscape shifted dramatically with landmark litigation, most notably *Naz Foundation v Government of NCT of Delhi* (2009)⁸ and its ultimate culmination in *Navtej Singh Johar v Union of India* (2018).⁹ By reading down Section 377 and decriminalising consensual same-sex acts between adults, the Supreme Court of India recognised the fundamental rights to privacy, dignity, and equality for LGBTQ+ individuals. However, an unintended consequence of this progressive judicial intervention was the exposure of a profound statutory vacuum: with Section 377 neutralised regarding consensual acts and subsequently dismantled, the legal system lacked a precise, primary criminal provision to penalise non-consensual sexual assault against adult men and non-binary

⁶ Indian Penal Code 1860, s 375

⁷ *Ibid* s 377

⁸ *Naz Foundation v Government of NCT of Delhi & Ors* (2009) 6 SCC 712

⁹ *Navtej Singh Johar and Ors v Union of India Thru Secretary, Ministry of Law and Justice* (2018) 10 SCC 1

individuals. While the Protection of Children from Sexual Offences (POCSO) Act, 2012,¹⁰ successfully introduced a gender-neutral framework to protect child survivors of all sexes, adult non-female survivors remained entirely excluded from primary sexual assault protections.

The enactment of the Bharatiya Nyaya Sanhita (BNS) in 2023, which officially repealed and replaced the IPC, presented a historic opportunity for the legislature to resolve this crisis by institutionalising gender neutrality for adult survivors. Instead, the transition to the new penal code reinforced the historical status quo. Section 63 of the BNS, which superseded Section 375¹¹ of the IPC, deliberately preserved the asymmetric, binary architecture of its predecessor. By maintaining that rape can only be committed by a male perpetrator against a female victim, the legislature chose to sustain the legal invisibility of adult male and LGBTQ+ survivors of sexual violence. This deliberate retention of anachronistic legal boundaries overlooks substantial empirical evidence and practitioner archives documenting a significant volume of non-female victims in urban centres like New Delhi. Consequently, the contemporary legislative matrix under the BNS perpetuates an institutionalised hierarchy of victimhood, leaving non-female survivors in a legal vacuum where their trauma is denied recognition under primary criminal law.

THE DOCTRINE OF EQUAL PROTECTION: A CONSTITUTIONAL CHALLENGE TO SECTION 63, BNS

The deliberate preservation of a gender-asymmetric framework within Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023, does not merely represent a policy failure; it constitutes a profound constitutional anomaly that stands in direct violation of the foundational guarantees of the Indian Constitution. Specifically, the statutory exclusion of adult male and LGBTQ+ survivors of sexual violence creates an unsustainable tension with Article 14, which mandates equality before the law and the equal protection of the laws within the territory of India. In Indian constitutional jurisprudence, the test for a valid legislative classification under Article 14¹² requires the fulfilment of two strict, cumulative prongs: first, the classification must be founded on an intelligible differentia that distinguishes persons or

¹⁰ Protection of Children from Sexual Offences Act 2012

¹¹ Indian Penal Code 1860, s 375

¹² Constitution of India 1950, art 14

things that are grouped from others left out of the group; and second, that differentia must have a rational nexus to the object sought to be achieved by the statute.

When Section 63 of the BNS is subjected to this classic judicial ledger, its constitutional validity begins to collapse. The state's implicit justification for restricting the definition of rape to female victims' rests on the historic and empirical reality that women are disproportionately targeted by patriarchal sexual violence. While this reality justifies the creation of affirmative, specialised legal protections for women under Article 15(3)¹³ it does not provide a rational nexus for the complete legal erasure of other demographics experiencing identical physical and psychological trauma. By completely denying non-female adult survivors access to primary penal remedies, the statute implies that the state's objective is not the universal eradication of non-consensual sexual penetration, but rather the protection of only a specific class of bodies. This arbitrary exclusion fails the rational nexus test, as the severity of the crime of non-consensual sexual violation remains identical regardless of the biological sex or gender identity of the survivor.

Furthermore, this statutory exclusion directly breaches the expanded horizon of Article 15,¹⁴ which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. In its landmark ruling in *Navtej Singh Johar v Union of India* (2018),¹⁵ the Supreme Court of India decisively expanded the scope of Article 15 by declaring that 'sex' is not a mere biological concept but includes 'sexual orientation' and 'gender identity' as immutable facets of an individual's identity. The court explicitly noted that any discrimination grounded in heteronormative stereotypes or binary assumptions violates the constitutional guarantee of non-discrimination. By hardcoding Section 63 around a strict heteronormative binary 1 a male perpetrator violating a female victim, the legislature has actively discriminated against LGBTQ+ Individuals. When a non-binary, transgender, or homosexual adult experiences an identical act of non-consensual sexual violence, the law systematically denies them the status of a 'victim' under primary criminal law solely based on their gender identity or orientation, directly violating the mandates established in *Navtej Singh Johar*.

¹³ *Ibid* art 15(3)

¹⁴ *Ibid*

¹⁵ *Navtej Singh Johar and Ors v Union of India Thru Secretary, Ministry of Law and Justice* (2018) 10 SCC 1

Ultimately, the transition to the BNS demonstrates a failure to progress from formal equality to substantive equality. While formal equality merely requires the law to treat equals equally within a closed category, substantive equality commands the state to recognise deep-seated structural vulnerabilities and ensure that its legal architectures do not actively perpetuate marginalised positions. By creating a rigid hierarchy of victimhood where the trauma of non-female survivors is statutorily invalidated, Section 63 of the BNS functions as an instrument of state-sanctioned exclusion. It leaves adult male and LGBTQ+ cohorts in a state of constitutional disenfranchisement, directly subverting the supreme law of the land to maintain an antiquated, non-inclusive paradigm of criminal justice.

STATUTORY CONTRADICTIONS: THE TRANSGENDER PERSONS ACT VS THE BHARATIYA NYAYA SANHITA

The systemic vulnerability of queer cohorts is further deepened by a profound contradiction between India's special welfare legislation and its primary penal code. Following the historical erasure of non-female victims from Section 63 of the Bharatiya Nyaya Sanhita (BNS) 2023,¹⁶ a transgender or non-binary adult who survives an egregious act of non-consensual sexual penetration is barred from invoking primary sexual assault laws. Instead, the legal machinery is forced to default to specialised legislation: the Transgender Persons (Protection of Rights) Act. Under Section 18(d)¹⁷ of this Act, committing acts of physical, verbal, emotional, economic, or sexual abuse against a transgender person is codified as a punishable offence. However, the statutory configuration of this provision exposes a deeply disturbing penal hierarchy that fundamentally devalues transgender bodies.

The primary defect of Section 18(d) lies in its irresponsible bundling of vastly different offences and its shockingly deficient sentencing structure. By grouping severe sexual assault and bodily violation under the same statutory umbrella as verbal insults and economic discrimination, the law fails to recognise the distinct gravity of sexual violence. Crucially, the maximum penalty allocated for offences under Section 18(d), including sexual abuse, is capped at a mere two years of imprisonment with a fine. This stands in stark, inequitable contrast to the punitive framework of primary criminal law under the BNS, where the rape

¹⁶ Bharatiya Nyaya Sanhita 2023, s 63

¹⁷ Transgender Persons (Protection of Rights) Act 2019, s 18(d)

of a cisgender woman triggers a strict minimum sentence of ten years, extending up to rigorous life Imprisonment or death.

This statutory disparity creates an indefensible legal paradox within Indian criminal jurisprudence. If a cisgender woman and a transgender individual experience an identical act of non-consensual sexual violence, the state apparatus legally values the trauma of the trans body as worth significantly less than that of the cisgender victim. This extreme imbalance directly undermines the progressive spirit of the Supreme Court's mandate in *NALSA v Union of India*.¹⁸ This established that transgender individuals possess a full, unconditional right to equal legal protection. By retaining a separate, diminished penal register for sexual offences against trans individuals, the legislative architecture actively protects the cis-normative binary. It leaves the queer community trapped in a statutory gridlock where heinous bodily violations are structurally minimised as minor misdemeanours.

THE POLITICAL ECONOMY OF LAWMAKING: DECODING THE J.S. VERMA COMMITTEE'S REJECTED VISION

The contemporary gender-asymmetric architecture of Section 63¹⁹ of the Bharatiya Nyaya Sanhita (BNS), 2023, is not an accidental carryover; it is the product of deliberate legislative choices made during defining moments of criminal law reform. In the wake of the 2012 Nirbhaya gang-rape case, the Government of India established the Justice J.S. Verma Committee²⁰ to recommend sweeping overhauls to the nation's sexual assault laws. Recognising that sexual violence is an exercise of power and domination that can target any individual, the Committee's report recommended that the definition of sexual assault be made completely gender-neutral for both survivors and perpetrators. The Committee reasoned that the state's duty to protect bodily integrity must extend unconditionally to all citizens, including adult men and transgender individuals, under a singular, modernised penal code.

¹⁸ *National Legal Services Authority v Union of India and Ors* (2014) 5 SCC 438

¹⁹ Bharatiya Nyaya Sanhita 2023, s 63

²⁰ Justice J S Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India 2013)

However, when the legislature codified these recommendations into the Criminal Law (Amendment) Act, 2013, a policy stance firmly preserved in the BNS, the vision of complete gender neutrality was explicitly rejected. This legislative pushback was driven by a complex political economy of lawmaking, influenced heavily by intense lobbying from several women's rights groups and socio-legal networks. The core resistance rested on a valid, deep-seated anxiety: in a deeply patriarchal society like India, powerful male abusers could weaponise gender-neutral provisions to file false counter-cases of sexual assault against genuine female victims or activists as a tactical tool to coerce them into dropping charges. Critics argued that making the category of the 'perpetrator' gender-neutral would ignore the stark structural power imbalances that define Indian society, potentially diluting the hard-won legal shields designed specifically for women.

While these concerns regarding weaponisation are grounded in real-world litigation dynamics, the state's response to the absolute exclusion of non-female victims represents a blunt over-correction. In its anxiety over the potential misuse of a gender-neutral perpetrator standard, the legislature completely ignored the separate possibility of an inclusive, gender-neutral victim standard. By failing to bifurcate these two issues, Indian lawmakers effectively decided that protecting the integrity of female-centric legal provisions required the total legal sacrifice of adult male and LGBTQ+ survivors. This historical rejection underscores a highly conservative approach to lawmaking. Instead of engineering sophisticated evidentiary safeguards to prevent the tactical misuse of the law, the Indian legislature chose a path of institutional inertia, choosing to preserve an anachronistic, binary paradigm rather than confronting the complex, intersectional realities of sexual violence.

INTERNATIONAL COMPARATIVE JURISPRUDENCE: THE UNITED KINGDOM, CANADA, AND SOUTH AFRICA

To overcome the persistent legislative inertia in India, it is highly instructive to analyse how other major common-law jurisdictions transitioned away from archaic, gender-asymmetric definitions of sexual offences. Historically, these nations inherited the same British colonial legal structures that shaped the Indian Penal Code of 1860, yet they systematically dismantled the gender binary within their primary penal frameworks. By examining the legislative evolutions of the United Kingdom, Canada, and South Africa, Indian legal

scholars can find clear, time-tested models for decoupling the definition of sexual trauma from the biological sex or gender identity of the survivor.

The United Kingdom executed a comprehensive modernisation of its penal code through the passage of the Sexual Offences Act 2003.²¹ While Section 1 of the UK Act maintains a biological distinction regarding the mechanics of commission, specifying that the offence of rape can only be perpetrated by an individual using a penis, it makes the gender of the victim entirely neutral. By codifying that rape occurs when a person penetrates the vagina, anus, or mouth of ‘another person’ without consent, the UK statute explicitly grants adult male, transgender, and non-binary survivors identical legal protection and access to the same high-tier sentencing guidelines as female survivors. Furthermore, the Act introduces separate, gender-neutral provisions for non-consensual sexual assault by penetration using other body parts or objects, completely closing any remaining statutory loopholes.

Canada adopted an even more radical, progressive approach by entirely removing the word ‘rape’ from its Criminal Code during a wave of sweeping systemic reforms. Under the Criminal Law Amendment Act, the Canadian legislature replaced the traditional, morally loaded category of rape with a tiered system of ‘Sexual Assault’ (Sections 271, 272, and 273 of the Canadian Criminal Code).²² This framework is completely gender-neutral for both perpetrators and survivors. By treating sexual violence primarily as a crime of non-consensual physical violation and aggression rather than a gendered marital or patriarchal infraction, Canadian law ensures that any person, regardless of identity, who suffers non-consensual sexual contact can access justice within a singular, inclusive penal architecture.

South Africa offers perhaps the most comprehensive framework for a post-colonial legal system through its Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.²³ Moving away from common-law binaries, Section 3 of the South African Act defines rape in absolute gender-neutral terms for all parties involved, focusing entirely on the act of non-consensual sexual penetration itself, irrespective of the anatomical parts or objects utilised. This statute is widely praised by international human rights scholars because it explicitly accommodates intersectional vulnerabilities, acknowledging that sexual violence

²¹ Sexual Offences Act 2003 (UK), s 1

²² Criminal Code (RSC 1985, c C-46) (Canada), ss 271–273

²³ Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (South Africa), s 3

is weaponised against individuals based on diverse sexual orientations and gender expressions. Collectively, these global frameworks demonstrate that removing the gender binary from primary criminal law does not weaken protections for women; rather, it elevates the entire justice system by ensuring that the state's penal power is deployed to protect bodily autonomy as a universal human right.

SYSTEMIC BARRIERS AND SOCIO-CULTURAL REALITIES

The statutory exclusion of non-female survivors of sexual violence within primary criminal law is fundamentally compounded by a matrix of systemic institutional hurdles and deeply entrenched socio-cultural realities. Within the Indian social fabric, pervasive heteronormative expectations and patriarchal constructions of masculinity impose a severe burden of silence upon male victims of molestation and harassment. Socialised to internalise false dichotomies of male strength and absolute invulnerability, male survivors encounter acute psychological friction, wrestling with intense shame, embarrassment, and an overarching fear of losing perceived masculinity or facing social ridicule if they choose to disclose their victimisation. Consequently, society frequently minimises, dismisses, or treats with intense scepticism any narrative of sexual trauma involving a male victim, further entrenching a culture of chronic underreporting. For LGBTQ+ individuals, this marginalisation is exacerbated by intersecting biases rooted in homophobia and transphobia. Queer and transgender survivors are disproportionately vulnerable to egregious acts of physical and sexual violence, which are at times weaponised as punitive tools such as 'corrective rape' aimed at forcibly conforming their identities to heteronormative standards. The deep-seated social stigma attached to non-normative gender identities and sexual orientations severely restricts help-seeking behaviour, frequently forcing these cohorts into a culture of isolation and silence.

These acute socio-cultural barriers interact maliciously with the structural defects of the state administrative apparatus. Because Section 63²⁴ of the BNS actively invalidates the legal existence of adult male and LGBTQ+ survivors of primary sexual assault, the state justice machinery operates entirely without specialised protocols to process their trauma. This structural vacuum fosters widespread corruption, institutional neglect, and a profound

²⁴ Bharatiya Nyaya Sanhita 2023, s 63

reluctance among law enforcement officials to register complaints or acknowledge non-female victimisation. When survivors attempt to navigate the criminal justice system, they are frequently subjected to secondary victimisation, facing discriminatory attitudes, procedural hostility, and arbitrariness from police and judicial officers. Furthermore, marginalised communities- particularly those stratified by caste, class, ethnicity, or minority religious status- experience a severe amplification of these barriers, where systemic biases intersect to choke access to adequate legal aid or state compensation mechanisms. This intersectional disenfranchisement is heavily exploited by structural actors, with survivors facing intense community or familial pressure to enter into extra-legal settlements rather than pursuing formal accountability. Ultimately, the total absence of state-sponsored, tailored psychosocial support structures, inclusive counselling networks, and protective safety nets leaves male and LGBTQ+ survivors completely isolated, transforming the pursuit of socio-legal justice into an active site of institutional trauma.

INSTITUTIONAL ENTRENCHMENT: POLICE REPORTING MECHANICS AND THE ZERO-FIR GRIDLOCK

The statutory exclusion of non-female survivors of sexual violence within Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023, transitions directly from a legislative failure into a rigid administrative gridlock at the ground level of state machinery. Within the operational framework of Indian law enforcement, the entry point into the criminal justice system is governed by Section 173 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the procedural successor to Section 154 of the Code of Criminal Procedure (CrPC), 1973, which mandates the registration of a First Information Report (FIR). However, because the text of primary criminal law explicitly bars adult men and LGBTQ+ individuals from being categorised as victims of rape, the physical and digital infrastructure utilised by state police forces is hardcoded to enforce this exclusion.

This digital entrenchment is most visible within the Crime and Criminal Tracking Network & Systems (CCTNS), the nationwide integrated portal used by law enforcement to record and track offences. The CCTNS software operates on structured drop-down menus and mandatory input validation parameters that are strictly bound to the letter of the penal code. Consequently, when an administrative desk officer attempts to enter a male or non-binary survivor as the primary victim under Section 63 of the BNS, the digital system creates an

immediate technical contradiction. Because the portal is programmed to allow only a female descriptor in the 'victim sex' field for primary sexual offences, the software prevents the generation of a valid FIR number.

This administrative gridlock fundamentally undermines progressive procedural mechanisms like the 'Zero FIR', a mandate designed to allow a victim to lodge a complaint at any police station irrespective of jurisdictional boundaries. When a non-female survivor attempts to file a Zero FIR for a severe sexual violation, police officers encounter an absolute systemic block. To bypass this algorithmic and statutory barrier, law enforcement desks routinely engage in administrative manipulation. They downgrade the egregious reality of non-consensual sexual penetration, registering the offence under minor, non-sexual penal provisions such as Section 115 (voluntarily causing hurt) or Section 126 (wrongful restraint) of the BNS.

This systematic dilution has a devastating compounding effect on national macro-data. Because these offences are misclassified from the outset to fit into the binary digital infrastructure of state portals, they are never captured under sexual assault indices by the National Crime Records Bureau (NCRB). This administrative invisibility creates a distorted statistical feedback loop: the state points to the absence of recorded data to justify its legislative inertia, while the database itself is actively engineered to suppress the reporting of non-female victimisation. Ultimately, this structural gridlock transforms the police station into a site of secondary trauma and institutional alienation, ensuring that the legal existence of adult male and queer survivors is erased before their cases can ever reach a court of law.

STRATEGIC POLICY RECOMMENDATIONS

To rectify the deep-seated statutory asymmetries and dismantle the institutional hurdles that marginalise non-female survivors, the Indian criminal justice apparatus requires an immediate, structural overhaul across legislative, administrative, and social domains. The implementation of this reformative agenda should be structured through the following strategic interventions:

The Indian Parliament must urgently amend Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023,²⁵ to substitute gender-neutral terminology, such as replacing ‘man’ and ‘woman’ with ‘perpetrator’ and ‘survivor’, thereby expanding the statutory definition of rape to recognise adult male and LGBTQ+ victims.

The Ministry of Home Affairs, in tandem with state police departments, must mandate comprehensive sensitisation training for law enforcement officials, creating standardised operational protocols to handle complaints from male and queer survivors with dignity and absolute confidentiality.

The state must strictly enforce a nationwide prohibition on anachronistic forensic practices, such as the discredited ‘two-finger test,’ while establishing modernised, universally accessible forensic examination protocols that cater effectively to diverse physiological topologies of sexual trauma.

The Ministry of Health and Family Welfare, alongside state welfare boards, must allocate dedicated state funding to establish inclusive, non-discriminatory crisis helplines, specialised psychological counselling units, and secure emergency shelter infrastructure tailored to the specific rehabilitation needs of male and LGBTQ+ survivors.

The National Legal Services Authority (NALSA) must expand institutional outreach to provide proactive, cost-free legal representation and comprehensive witness protection mechanisms for survivors intersecting with marginalised caste, class, or minority identities, shielding them from extra-legal coercive settlements.

The Ministry of Information and Broadcasting must curate public education initiatives and academic curricula aimed at disrupting rigid patriarchal definitions of masculinity and heteronormative stereotypes, actively de-stigmatising the act of help-seeking and encouraging increased reporting frequencies across all demographics.

CONCLUSION

Ultimately, this study underscores that the framing of sexual violence within an exclusively gender-asymmetrical binary operates as a severe systemic failure within contemporary

²⁵ Bharatiya Nyaya Sanhita 2023, s 63

Indian jurisprudence. The transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita, 2023,²⁶ rather than correcting these flaws, has codified a rigid status quo under Section 63.²⁷ This statutory choice leaves adult male and LGBTQ+ survivors marooned in a profound legal, administrative, and psychosocial vacuum, where the very digital infrastructure of law enforcement portals like the CCTNS is hardcoded to suppress their entry into the justice system. As demonstrated by the statutory contradictions with the Transgender Persons Act, 2019, and the rejection of the Justice J.S. Verma Committee's inclusive vision, the contemporary legislative matrix actively maintains a discriminatory hierarchy of victimhood that directly violates the constitutional mandates of Articles 14 and 15²⁸ as interpreted in *Navtej Singh Johar*.²⁹

Resolving this crisis requires the Indian legal system to look toward progressive international frameworks, such as those in Canada and South Africa, which decouple bodily integrity from binary gender roles. True reform demands a comprehensive structural shift that addresses the deep-seated cultural stigmas surrounding masculinity, removes the algorithmic and procedural barriers within police stations, and introduces gender-neutral legal protections for all adult survivors. Only by moving from a formal, identity-locked paradigm to a substantive, rights-based approach can criminal law dismantle its institutional biases and guarantee a safe, protective, and accountable environment for every citizen, completely independent of their gender identity or sexual orientation.

²⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 173

²⁷ Bharatiya Nyaya Sanhita 2023, s 63

²⁸ Constitution of India 1950, arts 14, 15(3)

²⁹ *Navtej Singh Johar and Ors v Union of India Thru Secretary, Ministry of Law and Justice* (2018) 10 SCC 1