GENDER NEUTRALITY IN BHARATIYA NYAYA SANHITA, 2023: REFORM OR SELECTIVE PROGRESS?

Declaration: The author has used an AI-assisted writing tool solely for language editing and grammar refinement purposes. All legal research, analysis, and conclusions presented in this manuscript are the author's own work.

ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS)[1] replaced the Indian Penal Code,1860 [2] with the objective of reforming and modernizing India's criminal justice system. One of the significant aspects associated with the enactment of the BNS is the claim that the legislation introduces gender- neutral reforms into Indian criminal law. Traditionally, Indian criminal jurisprudence has been largely gender-specific, especially in relation to sexual offences where women are recognized as victims and men as perpetrators. However, changing social realities, increasing recognition of LGBTQ+ rights, constitutional developments,[3] and debates surrounding equality have created demands for more inclusive criminal laws. The BNS attempts to respond to these demands by introducing gender-neutral terminology in several provisions relating to trafficking, assault, offences against children and cybercrimes. At the same time many important offences, notably rape, continue to be gender specific. This paper critically examines whether the BNS produces gender neutrality or merely minor selective progress. The paper examines constitutional principles, judicial precedents and socio-legal implications relating to gender neutrality under criminal law. It argues that while the BNS represents a progressive departure from some colonial approaches, it fails to adequately recognize diverse gender identities and equal victimhood across genders. Therefore, although the legislation is an important step of reform, the criminal code cannot yet be considered totally gender neutral. The study employs the doctrinal research methodology based on analysis of statutory provisions, constitutional principles, judicial precedents on gender neutrality and reform of criminal law in India.

Keywords: Gender Neutrality; Bharatiya Nyaya Sanhita, 2023; Criminal Law reform; LGBTQ+ Rights; Equality before Law; Sexual offence

[1] Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023 (India).
[2] Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).
[3] *Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).*

I. INTRODUCTION

The enactment of the Bharatiya Nyaya Sanhita, 2023 represents one of the most significant criminal law reforms in Independent India. Replacing the Indian Penal Code, 1860, the BNS was introduced with the stated aim of modernizing criminal law, removing colonial influences, and making the justice delivery system more citizen-centric. Among the various reforms highlighted by law makers and legal scholars, the issue of gender neutrality has emerged as a particularly important subject of discussion.

Criminal law in India was developed with a male dominated social structure. The Indian Penal Code, drafted during British colonial rule, reflected nineteenth-century notions of gender roles. Women were usually seen as persons in need of protections from abuse and exploitation, while men were often seen as primary perpetrators of criminal behavior. Consequently, many of the criminal law provisions were framed in the interest of protection of women. These measures were important in terms of protection, but they also created a legal framework that failed to consider the experience of male and transgender victims.

Over time, Indian society has changed socially and constitutionally in important ways. The growing focus on equality, individual dignity and non-discrimination has led to a re-examination of traditional assumptions relating to gender and sexuality. The recognition of transgender rights in *National Legal Services Authority v. Union of India* [4]and decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* [5]significantly altered the constitutional discourse on gender identity and equality. These developments confirmed the expectation that future reforms in criminal law would go beyond traditional gender categories and embrace a more inclusive approach, protecting everyone irrespective of gender.

In this context, the BNS was expected to create a comprehensive criminal framework capable of addressing the realities of contemporary society. Certain provisions of the BNS indeed move toward inclusivity by using broader terms such as “person” instead of gender-specific terminology. However, despite these reforms, many provisions continue to retain traditional gender assumptions, particularly in relation to rape and sexual offences.

[4] *National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India).*
[5] *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).*

The issue therefore arises whether the BNS genuinely establishes gender neutrality or merely introduces selective reforms while preserving conventional patriarchal structures. This paper seeks to critically evaluate the extent of gender neutrality under the BNS through constitutional, judicial, and socio-legal analysis. The paper also compares the BNS with the IPC to understand the nature and extent of reforms introduced.

II. Concept and Significance of Gender Neutrality in Criminal Law

Gender neutrality refers to the idea that laws should apply equally to every individual regardless of gender identity. A gender-neutral criminal law neither assumes that only women can be victims nor presumes that only men can commit offences. Instead, it recognizes that crimes can occur across all genders and that justice must be available equally to everyone.

The concept of gender neutrality is closely linked with constitutional principles of equality and dignity. Article 14 of the Constitution guarantees equality before law and equal protection of laws.[6] Article 15 prohibits discrimination on grounds of sex, while Article 21 guarantees dignity, privacy, and personal liberty. Together these provisions establish the constitutional foundation for inclusive criminal jurisprudence.

Traditionally, criminal laws dealing with sexual offences were based on the understanding that women were the primary victims of violence and exploitation. This approach was influenced by the historical oppression of women in patriarchal societies. However, modern legal discourse increasingly recognizes that men and transgender persons may also become victims of sexual violence, harassment, domestic abuse, trafficking, and exploitation.[7]

Gender neutral laws therefore become important for several reasons;

1. They ensure equal access to justice for all genders.
2. They recognize the rights and dignity of transgender and non- binary persons.
3. They reflect evolving constitutional morality and human rights standards.
4. They strengthen public confidence in the fairness of the legal system.

[6] INDIA CONST. arts. 14, 15, 21.
[7] Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023 (India).

At the same time, the debate surrounding gender neutrality is complex. Critics argue that fully gender-neutral laws may weaken protections available to women in a society where gender-based violence remains widespread. Supporters, however, maintain that recognizing all victims does not dilute women's rights but instead expands the scope of justice.

This tension between protective discrimination and formal equality is visible within the framework of the BNS.

III. Gender-Neutral Features under the Bharatiya Nyaya Sanhita, 2023

The BNS introduces several provisions that indicate a movement towards a more inclusive and gender-sensitive criminal justice framework.

- **Gender Neutrality in Offences Against Children**

  One of the most progressive features of the BNS is its broader approach toward offences against children. The legislation adopts terminology that protects children irrespective of gender. This reflects the understanding that both boys and girls may become victims of abuse, exploitation, trafficking, and violence.

  This approach is consistent with the Protection of Children from Sexual Offences Act,2012(POCSO), which itself adopts a gender–neutral framework. The recognition of child abuse across genders represents a positive shift away from traditional assumptions.[8]

- **Human Trafficking Provisions**

  The trafficking provisions under the BNS use broader terminology and recognize that trafficking may affect persons of all genders. Men, women, and transgender persons may all become victims of labor exploitation, forced prostitution, bonded labor, organ trafficking, or forced marriage.

  The gender-neutral drafting of trafficking offences reflects contemporary realities and strengthens the scope of legal protection.

- **Use of Inclusive Language in Certain Offences**

  Several provisions relating to assault, intimidation, kidnapping and criminal force use broader expressions such as "person" instead of gender-specific terminology. Such drafting avoids unnecessary exclusion and promotes equality in the

[8] Protection of Children from Sexual Offences Act, No. 32, Acts of Parliament, 2012 (India).

application of criminal law. This change also aligns with international trends favoring inclusive legal drafting.

- **Recognition of Transgender Rights**

  Although the BNS does not comprehensively recognize all aspects of gender diversity, the legislation indirectly reflects constitutional developments relating to transgender rights. The broader language used in certain provisions creates interpretative space for inclusion of transgender persons within criminal law protections.

  This development gains significance after the Supreme Court's decision in *NALSA v. Union of India*, where transgender persons were recognized as a third gender entitled to constitutional protections.[9]

- **Cyber and Technology-Related Offences**

  Modern crimes involving online harassment, cyberstalking, identity theft, and digital exploitation frequently affect individuals irrespective of gender. The broader drafting of several cyber-related offences under the BNS allows wider protection in the digital age.

IV. Areas where the BNS still lacks Complete Gender Neutrality

Despite introducing certain progressive reforms, the BNS continues to retain gender-specific assumptions in major areas of criminal law.

- **Gender-Specific Definition of Rape**

  The most important criticism concerns the continued gender-specific nature of rape provisions. Similar to Section 375 IPC, the BNS recognizes only women as victims of rape and men as perpetrators.

  This framework creates several limitations:

(i) Male victims are excluded from protection under rape provisions
(ii) Transgender persons do not receive explicit recognition.
(iii) Same-sex sexual violence remains inadequately addressed.

Critics argue that sexual violence should be understood as a violation of bodily autonomy rather than an offence restricted to a particular gender combination.

Supporters of the present framework argue that women continue to face

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

disproportionate levels of sexual violence in India. Therefore, they contend that women- specific rape laws remain necessary for effective protection. However, opponents maintain that legal recognition of male and transgender victims would strengthen rather than weaken the justice system.[10]

- **Inadequate Recognition of Male Victimhood**

  The BNS still inadequately addresses situations where men become victims of domestic violence, harassment, or sexual exploitation. Social stigma already discourages men from reporting abuse. The absence of explicit legal recognition further intensifies this problem. A truly gender-neutral criminal system must recognize that vulnerability and victimhood are not limited to women alone.

- **Limited Recognition of LGBTQ+ Experiences**

  Although certain provisions adopt inclusive language, the BNS does not fully accommodate the realities faced by LGBTQ+ communities. After Navtej Singh Johar, many expected criminal law reforms to expressly recognize diverse sexual orientations and gender identities.[11] However, the legislation still largely operates within traditional binary understanding of gender.

- **Retention of Patriarchal Assumptions**

  Certain provisions under the BNS continue to reflect paternalistic assumptions about women. Criminal law historically portrayed women primarily as vulnerable individuals requiring protection instead of autonomous persons possessing equal agency. While protection remains necessary due to continuing gender violence, excessive paternalism may reinforce stereotypes regarding female weakness and male dominance.

- **"Marital Rape Exception"**

  Another major criticism concerns the continuation of the marital rape exception. The law still does not fully criminalize non-consensual sexual intercourse within marriage when the wife is above the prescribed age.

  Critics argue that this exception violates bodily autonomy, dignity, and equality guaranteed under Article 14 and 21 of the Constitution. Marriage cannot be interpreted as permanent consent to sexual relations. The continuation of this exception reflects the incomplete nature of gender reform under the BNS.

[10] Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023, § 63 (India); Indian Penal Code, No. 45, Acts of Parliament, 1860, § 375 (India).
[11] *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).*

V. Constitutional Analysis of Gender Neutrality under the BNS

The constitutional validity and legitimacy of gender- neutral reforms must be evaluated through the lens of equality, dignity, and non- discrimination.

Article 14: Equality Before Law

Article 14 guarantees equality before Law and equal protection of laws. The exclusion of male and transgender victims from certain offences raises questions regarding equal treatment under criminal law. However, courts have also recognized that reasonable classification is constitutionally permissible if it seeks to protect vulnerable groups. Therefore, women-specific protections may still survive constitutional scrutiny if justified by social realities.

Article 15: Prohibition of Discrimination

Article 15 prohibits discrimination on grounds of sex but simultaneously permits special provisions for women and children under article 15(3).

This creates a constitutional dilemma:

1. Should criminal law focus on substantive equality by protecting historically oppressed women?
2. Or should it adopt equality through completely gender-neutral provisions?

The BNS "attempts to balance these objectives, albeit inconsistently."

Article 21: Dignity and Autonomy

The right to dignity and autonomy under Article 21 has expanded significantly through judicial interpretations. The Supreme Court has repeatedly recognized bodily integrity, sexual autonomy, and privacy as essential constitutional rights. A justice framework that ignores specific groups of victims may be inconsistent with these constitutional values.[12]

VI. Judicial developments influencing Gender inclusivity

Indian courts have significantly contributed toward evolving understanding of gender and criminal law.

- National Legal Services Authority v. Union of India:

  The Supreme Court recognized transgender persons as a third gender and affirmed their constitutional rights. The judgement emphasized dignity, autonomy, and equal protection under law.[13]

[12] *Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).*
[13] *National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India).*

- Navtej Singh Johar v. Union of India:

  The Court decriminalized consensual homosexual relations and recognized sexual orientation as an integral aspect of identity and dignity.[14]

- Joseph Shine v. Union of India (2018):

  Adultery was decriminalized because it turned women into the property of their husbands and reinforced patriarchal stereotypes.[15]

- Independent Thought v. Union of India (2017):

  The court read the marital rape exception narrowly in relation to minor wives and underscored the importance of bodily integrity and dignity.[16]

All these judicial developments are part of the trend toward inclusive criminal laws.

VII. Socio Legal Implications of Gender Neutrality

The question of gender neutrality is not only a question of legal interpretation, but also a question that goes to the heart of social attitudes and institutional practice**.**

1. Positive Implications

(i) **Inclusive justice**

Gender-neutral laws expand access to justice for all victims irrespective of gender identity.

(ii) **Recognition of Diverse Identities**

Such laws acknowledge the realities of LGBTQ+ communities and strengthen constitutional morality.

(iii) **Breaking down gender stereotypes**

Laws that are inclusive shatter the stereotypes that men are aggressors and women are victims only.

(iv) **Modernization of legal framework**

Gender neutrality is a reflection of social realities of the present and an attempt to bring Indian law in consonance with international standards.

2. Concerns And Issues

(i) **Continued Violence against women**

Critics fear that gender-neutral laws will weaken legal protections for women in a deeply patriarchal society.

---

[14] *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).*
[15] *Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).*
[16] *Independent Thought v. Union of India, (2017) 10 SCC 800 (India).*

(ii) **Social stigma**

Male and transgender victims may still hesitate to report offences due to stigma and social prejudice.

(iii) **Institutional Bias**

Police authorities and Judicial officers may lack adequate sensitization regarding gender diversity.

(iv) **Risk of Misuse Debates**

Discussions regarding misuse sometimes overshadow genuine concerns of victims and may discourage reporting.

3. **Comparative Perspective**

Several countries have adopted broader gender-neutral approaches in criminal law.

(i) **Canada**

focuses on consent rather than gender identity in sexual offences.[17]

(ii) **Australia**

recognizes victims irrespective of gender in many sexual offence laws.[18]

(iii) **The United Kingdom**

provides broader protection through inclusive sexual assault provisions.[19]

Compared to these jurisdictions, India's reforms under the BNS remain partial and cautious.

VIII. Critical Evaluation: Reform or Merely Selective Progress?

The BNS undoubtedly introduces certain progressive reforms compared to the IPC. Its broader terminology in trafficking, child protection, and assault provisions indicates movement toward inclusivity and constitutional modernity. However, the reforms remain selective rather than comprehensive. The continued gender-specific nature of rape laws, limited recognition of male victimhood, and inadequate inclusion of LGBTQ+ experiences that the legislation has not fully embraced gender-neutral criminal jurisprudence.

Another significant issue concerning gender neutrality under the Bharatiya Nyaya Sanhita, 2023 is the difficulty of balancing formal equality with substantive equality. Formal equality requires that every individual should be treated equally before the law irrespective

[17] Department of Justice Canada, Sexual Assault Law, GOVERNMENT OF CANADA (June 5, 2026, 2:30 PM), https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_8/index.html.
[18] Australian Institute of Family Studies, Sexual Violence Research, AUSTRALIAN INSTITUTE OF FAMILY STUDIES (June 5, 2026, 2:30 PM), https://aifs.gov.au/.
[19] Sexual Offences Act 2003, LEGISLATION.GOV.UK (June 5, 2026, 2:30 PM), https://www.legislation.gov.uk/ukpga/2003/42/contents.

of gender identity. Substantive equality, however, recognizes that certain groups, especially women, have historically experienced social discrimination, violence and unequal access to justice. Indian criminal law has traditionally followed a protective approach towards women due to the continuing prevalence of crimes such as rape, domestic abuse, trafficking, and sexual harassment. Therefore, many scholars and activists argue that completely gender-neutral laws may unintentionally weaken the legal safeguards available to women.

At the same time, modern constitutional principles increasingly emphasize inclusivity, dignity, and equal recognition of diverse gender identities. Judicial development relating to transgender rights and growing discussions regarding male victimhood demonstrate that criminal law can no longer function solely on traditional assumptions of gender. Consequently, the real challenge is not simply whether criminal law should be gender neutral, but how the justice system can create a balanced framework that protects vulnerable groups while also recognizing equal rights and safeguards for every citizen. The Bharatiya Nyaya Sanhita reflects this transitional phase within Indian constitutional and criminal jurisprudence. Although the legislation introduces neutral and more inclusive terminology in certain provisions, it still hesitates to completely move away from traditional gender specific approaches in important areas such as sexual offences. This indicates that criminal law reform in India is evolving slowly through selective changes rather than through a complete transformation of the existing legal structure.

The BNS reflects a transitional stage between traditional women- centric protection and modern inclusive equality. While lawmakers appear willing to modernize certain aspects of criminal law, they remain cautious in disturbing deeply rooted social and legal assumptions. Consequently, the BNS represents partial reform rather than a complete transformation of gender relations within criminal law.

IX. Recommendations

1. Sexual offence laws should gradually move toward gender- neutral frameworks.
2. Transgender and non-binary identities should receive explicit statutory recognition.
3. The marital rape exception should be removed.
4. Victim support mechanisms must become inclusive for all genders.
5. Police and judicial authorities should receive gender-sensitization training.
6. Criminal law reforms should balance women’s protection with broader equality

principles.

X. Conclusion

The Bharatiya Nyaya Sanhita, 2023 represents an important milestone in India's criminal law reform process. By introducing broader terminology in several provisions, the legislation attempts to reflect evolving constitutional values and social realities. The recognition of gender-neutral protections in areas such as trafficking, assault, child protection, and cyber offences indicate meaningful progress toward inclusivity.

However, the reforms remain incomplete. The continued gender-specific framework of rape laws, inadequate recognition of male and transgender victims, and retention of patriarchal assumptions demonstrate that the BNS has not yet achieved full neutrality. The legislation therefore reflects selective progress rather than comprehensive transformation.

A truly modern criminal justice system must protect every individual irrespective of gender identity while simultaneously addressing the structural realities of violence against women. Future reforms should therefore aim to create a balanced, inclusive, and constitutionally consistent framework that recognizes dignity, equality, and autonomy for all persons.