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**FROM RECOMMENDATION TO REFORM: REASSESSING THE
JUSTICE VERMA COMMITTEE'S VISION FOR GENDER –
NEUTRAL RAPE LAWS IN INDIA**

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ABSTRACT

A significant development in shaping India's criminal laws on sexual offenses was the passage of the Criminal Law (Amendment) Act, 2013. This law was influenced by the recommendations of the Justice J.S. Verma Committee, which aimed to expand the legal definition of rape. The amendment introduced several new offenses related to sexual assault, redefined the concept of consent, and included more types of sexual penetration that are considered prohibited. Despite these improvements, the law continued to maintain a gender-specific approach by identifying women as victims and men as offenders. The Bharatiya Nyaya Sanhita, 2023 replaced the Indian Penal Code, 1860, but still largely retains the same definition of rape under Section 63. This pattern of legislative continuity persists.

With changing understandings of equality, dignity, and gender identity, the continued use of a gender-specific framework for rape-related laws has sparked major constitutional and legal concerns. The Supreme Court's broad interpretation of constitutional morality and its recognition of transgender individuals as a protected group have transformed discussions around gender and rights. However, the current law in India does not provide protection for male, transgender, intersex, or non-binary survivors, as it only accounts for female victims.

This paper reviews the Justice Verma Committee's original vision through the perspective of gender neutrality. It evaluates whether the changes introduced by the Criminal Law (Amendment) Act, 2013, and the Bharatiya Nyaya Sanhita, 2023, align with constitutional

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protections under Articles 14, 15, 19, and 21 of the Constitution of India. The study suggests that a gender-inclusive approach to defining rape would better reflect the principles of constitutional equality and offer stronger legal safeguards against sexual violence. The analysis is based on Law Commission reports, judicial decisions, international legal comparisons, and human rights principles.

Keywords: Gender-Neutral Rape Laws; Justice Verma Committee; Bharatiya Nyaya Sanhita, 2023; Indian Penal Code, 1860.

1. INTRODUCTION

Since it aims to uphold the core principles of physical integrity, sexual autonomy, and human dignity, the law pertaining to rape holds a prominent role within the criminal justice system.⁴In India, however, the legal definition of rape has historically been molded by a gender-specific framework inherited from colonial criminal law. Male, transgender, intersex, and non-binary people are not included in the definition of rape because Section 375 of the Indian Penal Code, 1860 (IPC) only defines it as an offense committed by a man against a woman.⁵The Criminal Law (Amendment) Act, 2013 maintained the gender-specific aspect of the crime while greatly broadening the definition of rape by acknowledging other forms of penetration and establishing a legal meaning of consent.⁶The Bharatiya Nyaya Sanhita, 2023 (BNS), which superseded the IPC, has similarly kept this legislative approach under Section 63, continuing to acknowledge solely women as victims of rape.⁷

There has been a lot of constitutional and legal discussion over the continued use of a gender-specific definition. Although women continue to make up the vast majority of victims of sexual assault and thus need adequate legal protection, advances in international human rights law, comparative criminal jurisprudence, and constitutional law increasingly acknowledge that sexual violence can be committed against individuals regardless of their gender identity.⁸As a result, a few of jurisdictions have established gender-neutral definitions of

⁴INDIA CONST. art. 21.

⁵Indian Penal Code, No. 45 of 1860, Sec 375 (India) (repealed 2023).

⁶Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3–9 (India).

⁷Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India).

⁸Law Comm'n of India, 172nd Report on Review of Rape Laws (2000); Convention on the Elimination of All Forms of Discrimination Against Women arts. 1–2, Dec. 18, 1979, 1249 U.N.T.S. 13.

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sexual assault and rape while preserving specific protections for women who still face disproportionately high rates of gender-based violence.⁹

The argument about gender-neutral rape laws in India received additional prominence following the creation of the Committee on Amendments to Criminal Law under the chairmanship of former Chief Justice of India Justice J. S. Verma in January 2013.¹⁰ Constituted after the December 2012 Delhi gang rape, the Committee undertook a comprehensive review of criminal laws relating to sexual offences and recommended reforms grounded in constitutional values of equality, dignity, and personal liberty rather than patriarchal assumptions regarding sexuality.¹¹ Parliament kept the gender-specific definition of rape under Section 375 of the IPC even though the Criminal Law (Amendment) Act, 2013 included several of the Committee's suggestions.¹² This stance is also maintained under Section 63 of the Bharatiya Nyaya Sanhita, 2023, which furthers the discussion on whether India's rape law appropriately reflects modern constitutional values and changing conceptions of gender identity.¹³

This discussion has become even more heated as a result of later constitutional jurisprudence. By acknowledging equality, dignity, privacy, and gender identity as essential elements of constitutional governance, the Supreme Court has continuously broadened the application of Articles 14, 15, 19, and 21 of the Constitution.¹⁴ In cases such as *National Legal Services Authority v. Union of India*¹⁵ and *Navtej Singh Johar v. Union of India*¹⁶, the Court recognized transgender people as a protected group under the constitution and affirmed that constitutional morality requires equal legal protection for all people, regardless of sexual orientation or gender identity. Although these rulings did not directly address rape laws, they provide an important foundation for evaluating whether a gender-specific definition of rape remains aligned with constitutional guarantees of equality. These rulings offer a crucial constitutional foundation for determining whether a gender-specific definition of rape is still

⁹Sexual Offences Act 2003, c. 42, Sec 1–4 (U.K.); Criminal Code, R.S.C. 1985, c. C-46, Sec 271–273 (Can.); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

¹⁰Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

¹¹Id.

¹²Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3–9 (India).

¹³Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India).

¹⁴INDIA CONST. arts. 14, 15, 19 & 21.

¹⁵*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

¹⁶*Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

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consistent with the standards of equality and equal protection, even if they did not explicitly address rape legislation.

The discussion over changing the rules pertaining to sexual offenses has also been greatly influenced by the Law Commission of India. Together, the Forty-Second, Eighty-Fourth, One Hundred Fifty-Sixth, and One Hundred Seventy-Second Law Commission Reports highlighted the need for criminal law to change in response to evolving social realities and constitutional values while examining shortcomings in the substantive law governing rape, evidentiary standards, and victim protection.¹⁷ By taking a rights-based stance on sexual violence, the Justice Verma Committee expanded on these reform efforts and continues to have an impact on discussions about gender neutrality in Indian criminal law.¹⁸

This study critically reevaluates whether India's shift from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita, 2023 indicates substantive change or legislative continuity regarding the gender neutrality of the crime of rape in light of this constitutional and legislative context. By examining statutory developments, constitutional principles, judicial precedents, Law Commission Reports, and comparative international practices, the paper evaluates whether the current legal framework sufficiently reflects the constitutional guarantees of equality, dignity, and equal protection while addressing the evolving realities of sexual violence in modern India.

2. JUSTICE VERMA COMMITTEE AND THE DEBATE ON GENDER NEUTRAL SEXUAL OFFENCES

The Justice J. S. Verma Committee has played a significant role in the evolution of India's current legal system regarding sexual offenses. The Committee was established by the Indian government on December 23, 2012, in response to the gang rape in Delhi. Its goal was to review the current criminal code and suggest changes to improve the legal framework that deals with sexual violence.¹⁹ Chaired by former Chief Justice of India Justice Jagdish Sharan Verma, with Justice Leila Seth and former Solicitor General Gopal Subramaniam as

¹⁷ Law Comm'n of India, 42nd Report: Indian Penal Code (1971); Law Comm'n of India, 84th Report on Rape and Allied Offences (1980); Law Comm'n of India, 156th Report on the Indian Penal Code (1997); Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

¹⁸ Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

¹⁹ Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

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members, the Committee published its report within thirty days, producing one of the most prominent reform texts in Indian criminal law.²⁰

The Justice Verma Committee took a constitutional and rights-based approach to change, in contrast to other committees that mostly concentrated on punitive measures. Instead of only being a transgression against morality or modesty, it saw sexual violence as a breach of equality, dignity, bodily integrity, and personal autonomy.²¹ The Committee contended that criminal law should support substantive equality and respect for individual autonomy while guaranteeing adequate protection for survivors of sexual violence, citing the protections found in Articles 14, 15, 19, and 21 of the Constitution.²² The Report stressed that constitutional morality, not patriarchal presumptions or prejudices about gender and sexuality, must guide legislative reform.

Although the Committee did not expressly recommend replacing the gender-specific language of Section 375 of the Indian Penal Code, 1860 with a completely gender-neutral definition of rape, its constitutional reasoning has become central to subsequent academic and judicial discourse on gender neutrality.²³ The Committee has regularly declared that the constitutional provisions of equality and non-discrimination should guide the interpretation of criminal law. Because of this, many academics contend that it is getting harder to reconcile India's developing constitutional jurisprudence with the exclusion of male, transgender, intersex, and non-binary survivors from the statutory offense of rape, especially since the Supreme Court acknowledged gender identity as a protected constitutional right.²⁴

A number of the Committee's important recommendations were put into effect by the Criminal Law (Amendment) Act, 2013. These included the introduction of offenses like stalking, voyeurism, and acid attacks, the statutory recognition of affirmative consent, the expansion of the definition of rape to include multiple forms of penetration, and increased penalties for aggravated sexual offenses.²⁵ However, the IP is defined as an act of a formulation of a formulation of the IPC.²⁶ The Bharatiya Nyaya Sanhita, 2023 has continued

²⁰Id.

²¹Id.; INDIA CONST. arts. 14 & 21.

²²INDIA CONST. arts. 14, 15, 19 & 21.

²³Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

²⁴*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438; *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

²⁵Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3–13 (India).

²⁶Indian Penal Code, No. 45 of 1860, Sec 375 (India) (repealed 2023).

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this legislative position by basically duplicating the same term under Section 63, so keeping the same framework despite the passage of a new penal code.²⁷

The current debate over gender-neutral rape legislation demonstrates the tension between two constitutional goals. One perspective is that the gender-specific feature of rape law is justified since women continue to confront sexual violence in a structurally unequal social environment, allowing the state to adopt protective legislation under Article 15(3) of the Constitution.²⁸ The opposing opinion holds that the crime of rape should protect all individuals whose physical integrity and sexual autonomy are violated, regardless of gender identity, while keeping specific institutional safeguards for women. In light of constitutional developments that recognize equality, dignity, and gender identity, the Justice Verma Committee remains the primary normative framework for determining whether India's criminal law should evolve toward a gender-inclusive definition of rape without jeopardizing the goal of protecting women from gender-based violence.

3. CONCEPT AND SCOPE OF GENDER-NEUTRAL RAPE LAWS

The rationale behind gender-neutral rape legislation is that the legal ban against sexual violence should apply equally to all individuals, regardless of biological sex, gender identity, or sexual orientation. Rape laws have traditionally been drafted in common law jurisdictions with the presumption that only women can be victims and only men can be perpetrators. This approach reinforced historical understandings of sexual assault as an offense against female chastity and family honour, rather than as a violation of personal autonomy and bodily integrity. However, contemporary criminal law increasingly views rape as an offense against an individual's right to dignity, privacy, and sexual autonomy, calling gender-specific legislative definitions into doubt.

A gender-neutral rape law acknowledges that women contribute to the vast majority of sexual abuse victims. Rather, it broadens the scope of legal protection by accepting that men, transgender people, intersex people, and non-binary people can all become victims of non-consensual sexual penetration. Similarly, a gender-neutral framework acknowledges that sexual violence perpetrators can be any gender. As a result, such law attempts to ensure that

²⁷Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India).

²⁸INDIA CONST. art. 15(3); *Yusuf Abdul Aziz v. State of Bombay*, A.I.R. 1954 S.C. 321.

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criminal responsibility is established by the presence of compulsion, the absence of agreement, and the nature of the forbidden act, rather than the offender's or victim's gender.²⁹

The Justice J. S. Verma Committee examined sexual violence from a constitutional standpoint, emphasizing dignity, equality, and bodily integrity as essential ideals in criminal law reform.³⁰ Although the Committee did not advocate replacing Section 375 of the Indian Penal Code with a fully gender-neutral clause, its larger constitutional rationale has had a considerable impact on following scholarly debate. The Report challenged patriarchal ideas that have historically dominated rape jurisprudence and underlined that criminal law must change in accordance with constitutional guarantees under Articles 14 and 21 of the Constitution.³¹

Comparative criminal law reveals an increasing acceptance of gender-neutral sexual crime legislation. The Sexual Offences Act 2003 in the United Kingdom replaced conventional gender-specific offences with a broader legislative framework, but sexual assault in Canada is defined without regard for the victim's or accused's gender. South Africa criminalizes sexual penetration, regardless of gender, under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. These jurisdictions continue to recognize the disproportionate occurrence of violence against women, while still providing equal legal protection to all survivors of sexual abuse.³²

In India, however, Section 375 of the Indian Penal Code, 1860 and its replacement, Section 63 of the Bharatiya Nyaya Sanhita, 2023, continue to define rape solely as an offense committed by a man against a woman.³³ As a result, male, transgender, intersex, and non-binary survivors are excluded from the statutory definition of rape and must seek protection under other sexual offense laws. This legislative approach has sparked a long-running constitutional argument over whether continuing to exclude specific kinds of victims is consistent with the Constitution's ideals of equality, dignity, and equal protection.

²⁹Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

³⁰Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

³¹INDIA CONST. arts. 14 & 21; Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

³²Sexual Offences Act 2003, c. 42 (U.K.); Criminal Code, R.S.C. 1985, c. C-46, Sec 271–273 (Can.); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

³³Indian Penal Code, No. 45 of 1860, Sec 375 (India) (repealed 2023); Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India).

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4. IPC SECTION 375 Vs. BNS SECTION 63: A COMPARATIVE ANALYSIS

Since the Indian Penal Code, 1860 (IPC) was written, India's substantive criminal law has undergone the biggest reorganization with the passage of the Bharatiya Nyaya Sanhita, 2023 (BNS). One of the main goals of the BNS was to update the criminal justice system while maintaining legal clarity by replacing terminology from the colonial era.³⁴21 Nevertheless, the crime of rape is still governed by essentially the same legal structure in spite of this legislative shift. With just slight linguistic changes, Section 63 of the BNS replicates the key components of Section 375 of the IPC, keeping the offense's gender-specific character.³⁵22

The definition of rape under Section 375 IPC was previously broadened by the Criminal Law (Amendment) Act, 2013, which recognized penetration of the mouth, urethra, and anus, insertion of objects, and manipulation causing penetration, in addition to penile-vaginal intercourse. Additionally, the change established a clear statutory definition of consent under Explanation 2, which calls for an unambiguous voluntary agreement conveyed by words, gestures, or other means of communication.³⁶ The narrow, penetration-based interpretation of Indian rape law was drastically changed by these modifications to a consent-centered model. However, by characterizing the perpetrator as "a man" and the victim as "a woman," Parliament purposefully kept the gender-specific formulation.³⁷

These significant modifications are largely maintained in Section 63 of the Bharatiya Nyaya Sanhita. The definition of consent, the acts that constitute rape, and the situations that vitiate consent are all essentially the same as they are in the modified Section 375 IPC. As a result, neither the victim's nor the offender's identities were significantly altered by the legislative shift from the IPC to the BNS. The statutory definition of the offence continues to exclude male, transgender, intersex, and non-binary individuals, still only acknowledging women as rape victims.³⁸

This legislative continuity has drawn a lot of scholarly criticism from the perspective of constitutional equality. Gender identity is acknowledged by modern constitutional law as an essential component of individual autonomy and dignity. Therefore, it is unclear whether

³⁴Bharatiya Nyaya Sanhita, No. 45 of 2023 (India).

³⁵Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India); Indian Penal Code, No. 45 of 1860, Sec 375 (India) (repealed 2023).

³⁶Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3 (India).

³⁷Indian Penal Code, No. 45 of 1860, Sec 375 (as amended by the Criminal Law (Amendment) Act, 2013).

³⁸Bharatiya Nyaya Sanhita, No. 45 of 2023, Sec 63 (India).

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Section 63 is compatible with Articles 14 and 21 of the Constitution because transgender people and other gender minorities are not included in the definition of rape.³⁹ However, supporters of the current framework contend that rape laws may be justified as protective measures under Article 15(3) of the Constitution because they address systemic gender-based violence against women.⁴⁰

The Justice J. S. Verma Committee repeatedly stressed that criminal law must reflect constitutional ideals of equality, dignity, and non-discrimination, but it did not suggest changing the gender-specific terminology of the crime of rape.⁴¹ Following the Supreme Court's recognition of gender identity in *National Legal Services Authority v. Union of India* and its confirmation of constitutional morality in *Navtej Singh Johar v. Union of India*, these constitutional principles have grown in importance. These rulings have had a significant impact on scholarly discussions over whether the current legal framework sufficiently protects every person whose bodily integrity is damaged by non-consensual sexual acts, even though they did not undermine the gender-specific definition of rape.⁴²

The shift from the IPC to the BNS has been mostly legislative rather than revolutionary, as can be seen by comparing the two sections. The BNS updates the criminal code's nomenclature without changing the core elements of the rape offense. As a result, the main argument about gender neutrality is still open. The topic of whether similarly situated victims with different gender identities should receive equal legal recognition is still up for constitutional and legislative revision, even if the statutory protection afforded to women has been maintained without compromise.

Comparative Table: IPC Sec 375 and BNS Sec 63

Aspect	Section 375, IPC (Post-2013 Amendment)	Section 63, Bharatiya Nyaya Sanhita, 2023	Observations
Nature of offence	Rape	Rape	No substantive change

³⁹INDIA CONST. arts. 14 & 21; *Justice K. S. Puttaswamy (Retd.) v. Union of India* (2017) 10 S.C.C. 1; *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁴⁰INDIA CONST. art. 15(3); *Yusuf Abdul Aziz v. State of Bombay*, A.I.R. 1954 S.C. 321.

⁴¹Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013).

⁴²*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438; *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

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Aspect	Section 375, IPC (Post-2013 Amendment)	Section 63, Bharatiya Nyaya Sanhita, 2023	Observations
Offender	Man	Man	Gender-specific
Victim	Woman	Woman	Gender-specific
Forms of penetration	Expanded under 2013 Amendment	Retained	Identical in substance
Definition of consent	Explicit affirmative consent	Retained	No material alteration
Circumstances vitiating consent	Fear, coercion, intoxication, misconception, minority, inability to communicate	Retained	Same framework
Gender neutrality	Not recognized	Not recognized	Legislative continuity
Constitutional debate	Limited after 2013	Renewed after BNS	Debate continues following <i>NALSA</i> and <i>Navtej Singh Johar</i>

5. CONSTITUTIONAL ANALYSIS OF ARTICLE 14, 15, 19 AND 21

The main question in the constitutional debate surrounding gender-neutral rape laws is whether Section 63 of the Bharatiya Nyaya Sanhita, 2023, which continues to restrict the statutory offense of rape to female victims, satisfies the Indian Constitution's guarantees of equality, non-discrimination, dignity, and personal liberty. Article 15(3) of the Constitution gives the State the power to pass laws protecting women, but these laws must nevertheless comply with the more general requirement of substantive equality included in Articles 14 and 21.⁴³ Therefore, the question is whether the total exclusion of male, transgender, intersex, and non-binary survivors from the statutory offense of rape remains constitutionally sustainable in light of current constitutional jurisprudence, rather than whether women should receive special legal protection against sexual violence—a proposition that is uncontroversial under the constitution.

⁴³INDIA CONST. arts. 14, 15(3) & 21.

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Equal protection under the law and equality before the law are guaranteed by Article 14, which only permits classification when it is based on understandable differences that have a logical connection to the legislative goal.⁴⁴ The argument that women are disproportionately victims of sexual assault within patriarchal and unequal social institutions has historically been used to support the gender-specific construction of rape laws. Historically, this protective justification has been acknowledged as constitutionally acceptable. Nonetheless, constitutional equality has progressively changed from a formal notion of classification to a substantive guarantee that shields people from discrimination and arbitrary exclusion. The Supreme Court ruled in *National Legal Services Authority v. Union of India* ("NALSA") that transgender people are equally protected by the constitution and that gender identity is an essential part of individual dignity.⁴⁵ The ruling stressed that constitutional rights cannot be limited by biological sex alone and rejected tight binary categories. The Court's reasoning greatly influenced current discussions over gender-specific criminal laws, even though it was not explicitly concerned with rape law.

In addition to forbidding sex-based discrimination, Article 15(3) permits the State to provide particular protections for women and children.⁴⁶ Article 15(3) has been repeatedly read by the Supreme Court as permitting affirmative legislative measures intended to address structural and historical disadvantages experienced by women. The Court recognized the constitutionality of protective discrimination in *Yusuf Abdul Aziz v. State of Bombay*, upholding a statutory classification that favors women.⁴⁷ However, later constitutional reasoning has stressed that affirmative action cannot be used as an excuse for arbitrary exclusion in cases when people in similar circumstances are not given equal legal protection. Therefore, even while Article 15(3) may support the preservation of stronger protections for women, it does not necessarily address the constitutional question of whether other rape survivors should be completely exempt from the main offense.

From a provision against deprivation of life and personal liberty to a comprehensive protection of dignity, bodily integrity, privacy, and decisional autonomy, Article 21 has undergone radical judicial interpretation. The Supreme Court reiterated that individual

⁴⁴*State of West Bengal v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75; *Budhan Choudhry v. State of Bihar*, A.I.R. 1955 S.C. 191.

⁴⁵*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁴⁶INDIA CONST. art. 15.

⁴⁷*Yusuf Abdul Aziz v. State of Bombay*, A.I.R. 1954 S.C. 321.

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autonomy is at the core of constitutional liberty in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, acknowledging privacy as an essential component of Article 21.⁴⁸ Similar to this, in *Navtej Singh Johar v. Union of India*, the Court upheld that constitutional guarantees protect all people regardless of gender identity or sexual orientation and used the doctrine of constitutional morality to invalidate discriminatory legal provisions based on sexual orientation.⁴⁹ All of these rulings support the idea that the violation of physical integrity and personal autonomy, rather than the victim's gender, is what causes the constitutional harm caused by sexual violence.

By safeguarding the freedoms of expression, mobility, and personal choice—all of which are negatively impacted by sexual violence—Article 19 further enhances these safeguards. The Supreme Court has consistently acknowledged that the genuine enjoyment of fundamental freedoms is contingent upon the ability to live in dignity and without fear. These fundamental rights are directly harmed by sexual violence, regardless of the survivor's gender, as it compromises psychological stability and bodily autonomy.⁵⁰

When taken as a whole, Articles 14, 15, 19, and 21 create a constitutional framework that acknowledges both the necessity of guaranteeing equal regard for each person's dignity and the legality of laws protecting women. One of the most important open issues in India's current criminal law is whether Section 63 of the *Bharatiya Nyaya Sanhita* adequately satisfies both constitutional goals.

6. LAW COMMISSION REPORTS AND THEIR RELEVANCE TO GENDER NEUTRALITY

It is impossible to comprehend the development of Indian rape legislation without looking at the legislation Commission of India's role. Prior to the Justice Verma Committee's 2013 assessment of sexual offense laws, a number of Law Commission Reports had pointed out flaws in the current legal system and suggested changes to improve substantive criminal law, victim protection, and evidentiary standards. Even though none of these investigations specifically supported a completely gender-neutral definition of rape, taken as a whole, they

⁴⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

⁴⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

⁵⁰ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

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added to the conversation about equality, physical integrity, and the updating of laws pertaining to sexual offenses.⁵¹

After independence, the 42nd Law Commission Report on the Indian Penal Code (1971) was one of the first thorough analyses of criminal law reform. In view of evolving social realities, the Commission recognized that the current provisions pertaining to rape needed to be re-examined and suggested several changes pertaining to penalties and procedural protections.⁵²

39 The Report, however, mostly upheld the conventional understanding of rape as a crime committed by a man against a woman. Instead, then re-evaluating the gendered structure of the offense itself, the focus remained on bolstering enforcement tools.⁵³

The preparation of the 84th Law Commission Report on Rape and Allied Offenses (1980) in response to growing public concern about the treatment of rape survivors within the criminal justice system gave it increased prominence. Consent, corroboration, evidentiary obstacles, and custodial rape were all topics covered in the report. Additionally, it condemned judicial strategies that placed too much emphasis on the prosecutrix's behaviour or personality rather than the facts of the accused offense.⁵⁴ The Criminal Law (Amendment) Act, 1983, which made significant modifications to evidentiary presumptions and custodial rape, was subsequently impacted by several of its recommendations. However, the Commission did not suggest a gender-neutral definition of the crime and persisted in viewing rape as essentially violence against women.⁵⁵

A number of important criminal law laws were reviewed in the 156th Law Commission Report on the Indian Penal Code (1997), which emphasized the need for more uniformity in the legislation pertaining to sexual offenses.⁵⁶ The Report acknowledged that criminal law must adapt to changing constitutional values and international human rights standards, even though it did not explicitly support gender neutrality. Later debates on rape law reform were influenced by its more general focus on modernity and legal consistency.⁵⁷

⁵¹Law Comm'n of India, 42nd Report: Indian Penal Code (1971); Law Comm'n of India, 84th Report on Rape and Allied Offences (1980); Law Comm'n of India, 156th Report on the Indian Penal Code (1997); Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

⁵²Law Comm'n of India, 42nd Report: Indian Penal Code (1971).

⁵³Id.

⁵⁴Law Comm'n of India, 84th Report on Rape and Allied Offences (1980).

⁵⁵Criminal Law (Amendment) Act, No. 43 of 1983 (India); Law Comm'n of India, 84th Report on Rape and Allied Offences (1980).

⁵⁶Law Comm'n of India, 156th Report on the Indian Penal Code (1997).

⁵⁷Id.

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The 172nd Report on Review of Rape Laws (2000) is still the most pertinent Law Commission study when it comes to current discussions on gender neutrality.⁵⁸ The Commission, which was established in accordance with the Supreme Court's directives in *Sakshi v. Union of India*, conducted a thorough analysis of the procedural and substantive aspects of rape law.⁵⁹ Notably, the Report suggested a larger definition that might cover a greater variety of non-consensual sexual activities and suggested substituting the term "rape" with the more inclusive phrase "sexual assault."⁶⁰ In order to guarantee greater protection against sexual assault, the Commission also recommended that some sexual offenses be written in terms that are gender-neutral. The Report acknowledged that the legal response to sexual violence should primarily focus on the nature of the violation rather than traditional assumptions concerning gender, which marked a significant departure from previous approaches even though it did not advocate for a completely gender-neutral rape provision.⁶¹

The 172nd Report had a significant impact on later judicial and legislative developments. Later reform efforts, such as the work of the Justice Verma Committee and the Criminal Law (Amendment) Act, 2013, were influenced by a number of proposals about the expansion of sexual offenses, evidentiary safeguards, and victim protection.⁶² The Report was a crucial transitional document that shifted Indian rape law from limited ideas of chastity and morality to a rights-based view centered on bodily integrity and autonomy, according to academic observers.⁶³

When considered collectively, these Law Commission Reports show a slow but noticeable change in Indian legal philosophy. Later investigations placed more emphasis on victim dignity, constitutional rights, and the need to adapt criminal legislation to changing socioeconomic realities, while earlier reports primarily addressed procedural flaws and harsher penalty. The cumulative trajectory of Law Commission literature shows an increasing understanding that sexual assault must be addressed via principles of equality, physical integrity, and human dignity, even though none of the findings explicitly supported a completely gender-neutral definition of rape. This intellectual development served as the

⁵⁸Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

⁵⁹*Sakshi v. Union of India*, (2004) 5 S.C.C. 518.

⁶⁰Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

⁶¹*Id.*

⁶²Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma, Chairperson, 2013); Criminal Law (Amendment) Act, No. 13 of 2013 (India).

⁶³See generally Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India*, 22 Colum. J. Gender & L. 60 (2011).

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basis for the Justice Verma Committee's later constitutional vision of criminal law reform, and it continues to influence discussions on the future of gender neutrality under the Bharatiya Nyaya Sanhita, 2023.

7. JUDICIAL INTERPRETATION

The evolution of rape law in India has been significantly influenced by judicial interpretation, which has shifted its emphasis from conventional ideas of morality to constitutional concepts of equality, dignity, bodily integrity, and individual autonomy. While the Supreme Court has not directly addressed the constitutionality of the gender-specific definition of rape found in Section 375 of the Indian Penal Code, 1860 ("IPC") or Section 63 of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), a number of important rulings have had a substantial impact on the conversation about gender neutrality in criminal law.

Tukaram v. State of Maharashtra, also referred to as the Mathura Custodial Rape Case, marked a sea change in Indian rape law.⁶⁴ By ruling that the prosecution had not established the lack of consent, the Supreme Court cleared the accused police officers. The Criminal Law (Amendment) Act, 1983 was ultimately the result of countrywide protests against the ruling, which was heavily criticized for its reliance on stereotyped assumptions about consent and victim behaviour.⁶⁵ The Indian Evidence Act's Section 114A, which established a statutory presumption about lack of consent in some custodial rape cases, was one of the significant procedural safeguards introduced by the modification. The case signalled the start of survivor-centered changes in Indian rape legislation, even though it had nothing to do with gender neutrality.

In *State of Punjab v. Gurmit Singh*, the Supreme Court reiterated that rape is a serious violation of human dignity and stressed that if the prosecutrix's statement inspires confidence, it does not typically need to be corroborated.⁶⁶ The Court emphasized that criminal cases involving sexual offenses must be carried out with care and respect for the dignity of victims, rejecting patriarchal presumptions about the behaviour of survivors. This ruling upheld the constitutional significance of physical integrity and improved the survivors' evidentiary position.

⁶⁴*Tukaram v. State of Maharashtra*, (1979) 2 S.C.C. 143.

⁶⁵Criminal Law (Amendment) Act, No. 43 of 1983, Sec 2–8 (India); Indian Evidence Act, No. 1 of 1872, Sec 114A (inserted by the Criminal Law (Amendment) Act, 1983).

⁶⁶*State of Punjab v. Gurmit Singh*, (1996) 2 S.C.C. 384.

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In *Sakshi v. Union of India*, the Supreme Court further recognized the shortcomings of the concept of rape before to 2013.⁶⁷ The Court acknowledged the shortcomings of the current law and emphasized the need for statutory reform, even if it declined to judicially expand Section 375 IPC to include all forms of sexual intercourse, stating that such reform belonged within the legislative domain. Through the Criminal Law (Amendment) Act, 2013, Parliament later expanded the definition of rape while keeping its gender-specific framework.⁶⁸

In *National Legal Services Authority v. Union of India (NALSA)*, the Supreme Court recognized transgender individuals as a constitutionally protected group, stating that Articles 14, 15, 19, and 21 apply equally to all regardless of gender identity. This decision significantly altered the constitutional framework governing gender identity.⁶⁹ In *Navtej Singh Johar v. Union of India*, the Court upheld this idea while acknowledging the rights of sexual and gender minorities and emphasizing constitutional morality, equality, dignity, and individual autonomy.⁷⁰ Both rulings contest the constitutionality of denying transgender people statutory protection against rape, even though they did not specifically address rape legislation.

In a similar vein, *Independent Thought v. Union of India* affirmed that sexual abuse essentially breaches constitutional dignity by recognizing physical integrity and decisional liberty as important aspects of Article 21.⁷¹ The Court overturned the offense of adultery in *Joseph Shine v. Union of India*, ruling that criminal law must adhere to constitutional principles of equality and individual autonomy and cannot support discriminatory gender stereotypes.⁷² Together, these rulings provide a legal framework for reevaluating gender-specific criminal laws in the context of substantive equality.

When considered collectively, these rulings show how the Supreme Court has gradually moved toward a constitutional framework based on equality, dignity, privacy, bodily autonomy, and constitutional morality. Although the Court has not yet ruled that Section 63 of the *Bharatiya Nyaya Sanhita* is unconstitutional, its developing jurisprudence offers a solid constitutional foundation for reevaluating whether the crime of rape should continue to be

⁶⁷*Sakshi v. Union of India*, (2004) 5 S.C.C. 518.

⁶⁸Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3 (India).

⁶⁹*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁷⁰*Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

⁷¹*Independent Thought v. Union of India*, (2017) 10 S.C.C. 800.

⁷²*Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

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gender-specific or change into a gender-inclusive framework that safeguards all victims of non-consensual sexual violence without lessening the unique protections granted to women.

8. INTERNATIONAL PERSPECTIVES

According to comparative criminal law, there is a growing trend toward gender-neutral sexual offense laws that focus on human dignity, consent, and physical autonomy rather than the gender of the victim or the offender. In assessing India's ongoing gender-specific definition of rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023, these developments offer a helpful standard.

By adding gender-neutral charges including assault by penetration and sexual assault, the Sexual Offences Act 2003 in the UK preserved the crime of rape while providing protection to victims of any gender.⁷³ By substituting the gender-neutral crime of sexual assault for rape in the Criminal Code, Canada took a more comprehensive approach.⁷⁴ According to South Africa's Criminal Law (Sexual Offences and Related Matters), rape is defined as non-consensual intercourse against any individual. The Amendment Act of 2007.⁷⁵

International agreements that prioritize equality, dignity, and adequate legal protection against violence include the ICCPR and CEDAW.⁷⁶ However, the Yogyakarta Principles guarantee equal protection regardless of sexual orientation or gender identity.⁷⁷ These international and comparative developments imply that India can adopt a more inclusive framework for sexual offenses without undermining the unique protections afforded to women.

9. CONCLUSION

India's rape laws have evolved as a result of a slow effort to align criminal laws with the principles of equality, decency, and individual autonomy found in the constitution. The legislature kept the gender-specific definition of rape even though the Criminal Law (Amendment) Act, 2013 significantly broadened the offense's scope by adopting a consent-

⁷³Sexual Offences Act 2003, c. 42, Sec 1–3 (U.K.).

⁷⁴Criminal Code, R.S.C. 1985, c. C-46, Sec 271–273 (Can.).

⁷⁵Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 Sec 3–5 (S. Afr.).

⁷⁶Convention on the Elimination of All Forms of Discrimination Against Women arts. 1–2, Dec. 18, 1979, 1249 U.N.T.S. 13; International Covenant on Civil and Political Rights arts. 2 & 26, Dec. 16, 1966, 999 U.N.T.S. 171.

⁷⁷International Commission of Jurists & International Service for Human Rights, Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity princs. 2, 5 & 30 (2007).

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based definition and acknowledging other types of penetrative sexual assault. Section 63 of the Bharatiya Nyaya Sanhita, 2023, which still solely acknowledges women as rape victims and men as rapists, has maintained this stance.⁷⁸ As a result, male, transgender, intersex, and non-binary survivors are still unable to access the primary statutory protection, despite notable changes in other areas of sexual crime law.

This analysis shows that after the Justice J. S. Verma Committee's recommendations were submitted in 2013, the constitutional environment has changed significantly. Judicial rulings in cases such as *National Legal Services Authority v. Union of India*, *Navtej Singh Johar v. Union of India*, *Independent Thought v. Union of India*, and *Joseph Shine v. Union of India* have repeatedly reiterated that fundamental constitutional values that apply to all people, regardless of gender identity, include equality, dignity, bodily autonomy, privacy, and constitutional morality.⁷⁹ These rulings offer a convincing constitutional basis for reevaluating the offense's ongoing gender-specificity even though they did not explicitly examine the constitutionality of rape statutes.

Comparative legal history also shows that particular protections for women can coexist with gender-inclusive sexual offense statutes, acknowledging both the social reality that women continue to be disproportionately impacted by sexual violence and the constitutional requirement of equality.⁸⁰ Therefore, while maintaining the unique protections afforded to women under Article 15(3) of the Constitution, any future legislative reform should aim to extend statutory protection to all survivors of non-consensual sexual penetration. This strategy would improve the validity and inclusivity of India's criminal justice system without diminishing women's rights. In the end, re-evaluating the Justice Verma Committee's perspective in light of current constitutional jurisprudence presents a chance to guarantee that rape law upholds the values of human dignity, equal protection, and access to justice for all victims of sexual assault.⁸¹

⁷⁸Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63 (India); Criminal Law (Amendment) Act, No. 13 of 2013, Sec 3 (India).

⁷⁹*National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438; *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1; *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800; *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

⁸⁰Sexual Offences Act 2003, c. 42, Sec 1–3 (U.K.); Criminal Code, R.S.C. 1985, c. C-46, Sec 271–273 (Can.); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 Sec 3–5 (S. Afr.).

⁸¹Law Comm'n of India, 172nd Report on Review of Rape Laws (2000); Comm. on Amendments to Criminal Law, Report of the Committee on Amendments to Criminal Law (Justice J. S. Verma, Chairperson, 2013); INDIA CONST. arts. 14, 15, 19 & 21.

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