

INVISIBLE VICTIMS: LEGAL INVISIBILISATION OF MALE SURVIVORS OF SEXUAL OFFENCES IN INDIA – A CONSTITUTIONAL AND COMPARATIVE ANALYSIS.

N.H. Arunadevi¹, Uma S. Priya²

¹student, V BBA LLB(Hons), school of law, Vels Institute of Science, technology and Advanced studies (VISTAS), Chennai-17.

² Assistant professor (Law), school of law, Vels Institute of Science, technology and Advanced studies (VISTAS), Chennai-17.

Abstract - Sex crimes revolve around attacks on one and his body, dignity, and freedom. The old system of the Indian judiciary has always exhibited sexism in its nature with the women always at the receiving end and the men at the sending end and thus there is no chance of equality of genders. It has been used to ensure that the perpetrators of violence on the women subjected to violence ensure that male victims go undetected within the justice system though it might have played a critical role in educating the society about violence against women. This study examines the issue of ostracism of men as victims of sexual harassment legislation in India, namely in the workplace (the Bharatiya Nyaya Sanhita, 2023). Based on the edge case and comparative analysis, the current work analyzes the constitutional interest in responding to such exclusion, considering Articles 14 and 21 of the Constitution of India. It also provides a comparison of the legal systems of some countries such as; Australia, South Africa, Canada and the UK. The article reasons that statutes aimed at sexual offences depending on the gender of an individual result in subjective characters as well as negate fundamental rights to equality and respectability. It wraps up by pointing out the necessity of the multi-faceted, gender-neutral, and victim-centered changes to the laws in India that is designed to provide justice to everyone.

key words: sexual crimes, gender-neutral laws, legal invisibilisation, Male victimisation, constitutional equality, India

1. INTRODUCTION

The ultimate forms of sexual violence are inflicting harm or damage to the bodily autonomy, dignity, or freedom of another person. The most common paradigm of the legal discourse on sexual offences in India is gender-biased long-standing where men are viewed as perpetrators and women as the victims. Male victims of systematic violence against women are invisible legally even though this system of operation has been instrumental in combating this vice.

Sexual offences are still defined in the existing legal frameworks, Bharatiya Nyaya Sanhita, 2023 and other legal systems, that inclusively only covers criminal sexual offences committed by one gender and not another male gender.¹ Even though the Criminal Law (Amendment) Act, 2013 significantly altered the laws that were in this area, this aspect of their core was not affected by this law.² Because of this, male survivors are unable to get enough institutional assistance and legal redress.

The Supreme Court further added to the high concept of the case by decriminalising consensual same-sex relations in their landmark case *Navtej Singh Johar v. Union of India* by casualising Section 377 of the Indian Penal Code, thus making the case even more high profile.³ The legal gap brought about by the loss of a phrase with which non-consensual activity perpetrated against males had been addressed was legal in nature, notwithstanding that the decision had been an important move towards acceptance of sexual autonomy and dignity.

Articles 14 and 21 of the Indian Constitution are very apprehensive of male survivors being denounced in such a manner. There should be no arbitrary classification and all are entitled to equal protection under the law as laid down in Article 14.⁴ The ruling in the case of *E.P Royappa v/s. State of Tamil Nadu* points out that equality courts disapprove of arbitrary decisions. Article 21 equally guarantees the rights to personal liberty and life including the autonomy of the body and dignity.⁵ The identification of privacy as an intrinsic part of human dignity in *Justice K.S. Puttaswamy v. Union of India* by the Supreme Court has far-reaching implications on the understanding of these rights.⁶

Gradually, as much as these progressive constitutional amendments have been made, the legislative provisions that govern sexual offences are still gender inclusive. Lack of harmony between constitutional and legal requirements lead to disparate protection and systemic discrimination. It makes a distinctive contribution to the literature along with the material on doctrinal and comparative analysis as it presents a draft of the Sexual Harassment of Men (Prevention, Prohibition and Redressal) Bill, 2026 which would be discussed in the legislature. The suggested bill would address the specified shortcomings by incorporating gender-neutral terms, user-friendly complaint actions, and remedies. It aims to correct the Indian legal framework whereby it ought to be victim-focused, more inclusive by strengthening the constitutional rights of body freedom, dignity, and equality.

Research Methodology

The research methodology is characterized as a comparative and doctrinal-study of the invisible experiences of Indian male survivors of sexual justice offences. An in-depth discussion of constitutional ideas that refer to sexual crimes, legal decisions and modifications makes up the doctrinal approach. The Bharatiya Nyaya Sanhita, 2023, Constitution and the decisions of famous judges, like Justice K.S. Puttaswamy v. Union of India [2] and *Navtej Singh Johar v. Union of India* [3], should be considered as primary sources.⁷

Several critical reviews of the current legal system and failures have been undertaken through the secondary sources of materials such as textbooks, journal articles, and commentary of academics. Moreover, the law in certain of these countries has been compared and analysed such as in the UK, in Canada, South Africa, in Germany and in Australia. To care about global tendencies in a gender-neutral and consent-based criminal law on sexual offences, a comparative approach towards the search of a solution should be utilized. It is mainly a qualitative study because through it, changes such as a victim-oriented and gender-affirmative legal system were offered and it attempted to come up with a sense on why the constitutional promises and legislative acts were not mutual.

2. LEGAL FRAMEWORK GOVERNING SEXUAL OFFENCES IN INDIA

The legal system of dealing with sexual crimes in India over the years has changed to feminist paradigm according to which men are wrongdoers and women are victims. One of the initial notes of such a structure was the Indian government in the Victorian period, which constructed gender norms and code of moral during the colonial period. In this environment, sexual offences were seen as a crime against women or their right to be chaste and kept safe and not as a way of violating the universally recognized right to own oneself. The coverage of rape, as that stated in section 375 of the Code was not applicable to male survivors because the

¹ Bharatiya Nyaya Sanhita 2023, s 63; Indian Penal Code 1860, s 375 (repealed).

² Criminal Law (Amendment) Act, 2013.

³ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁴ Constitution of India, art 14.

⁵ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

⁶ *KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁷ Bharatiya Nyaya Sanhita, 2023; Constitution of India, arts 14, 19, 21; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; *KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

offense was very specific to women. Although time passes by, the practice will still be subject to the provisions of the law in force at the current time.

One example of this is Bharatiya Nyaya Sanhita, 2023, which still uses it in a gender-based manner recognising only women as victims of rape.⁸ The law might have been revised, though with the most significant revision of the Criminal Law in 2013, which broadened the definition of sexual offences to cover assaults and harassment, they all continue to harbor a certain level of sexism.⁹ Male survivors, therefore, fail to be incorporated into the field of broad protection of the law and usually lack other appropriate solutions in the area of the criminal law.

Section 377 of the Indian Penal Code has been the partial solution to address non-consensual sex against males some time ago.¹⁰ The provision was occasionally applied to criminalise gay-on-gay victimisation; its main aim was to make the same sex relationships that involved consent criminal. This however took a different twist when the Supreme Court quashed the Section 377 in *Navtej Singh Johar v. Union of India* which decriminalised consensual same-sex intercourse.¹¹ The verdict led to the repeal of a provision, which touched on individual cases of sexual assault against males, yet the decision has been praised as the move in the right direction, in a bid to legalize sexual autonomy and dignity. Absence of a gender-neutral option has provided one more legal gap and clears the male survivors.

Harassment in the workplace has an institutional basis, and the problem of exclusion is not as limited as criminal law. Sexual harassment in the workplace is considered with special legislation which also comes into force only regarding female employees: the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013. This marginalisation reinforces structural inequalities by refusing male victims the right to formal complaint procedures and institutional solutions. The trend towards invisibilization of the law is increasing with lack of gender sensitivity in civil and criminal laws.

This leave out casts some grave constitutional concerns with reference to Articles 14 and 21 of the Indian Constitution. The unreasonable and arbitrary categorization is prohibited under Article 14 that ensures equality before the law as well as equal protection of the laws.¹² Article 14 is not limited to the formal categorization of people, so that the consequences to the equality principle of the action being arbitrary refer to *E.P. Royappa v. State of Tamil Nadu*, in which the Supreme Court accentuates that equality principles demand an opposite action.¹³ It is quite valid to doubt the legality of the sexual offence legislation as they still continue to discriminate against male survivors on the basis of their gender only, excluding any rational relation to the purpose protecting persons against the violation of bodily autonomy.

The right of life, personal liberty, dignity, privacy and the autonomy of the body of any person have long been thought to be part of Article 21.¹⁴ A fundamental human right, the right to personal privacy was upheld by the Supreme Court in the case of *Justice K.S. Puttaswamy v. Union of India*.¹⁵ Moreover, the decision of the Court and its confirmation in *Navtej Singh Johar v. Union of India* was yet again the affirmation of the primacy of the sexual autonomy and dignity in constitutional law.¹⁶ Rape is a violation of these rights in all instances, irrespective of the type of the victim. Thus, the equality of protection and dignity right is violated in denying the male victimisation.

Comparing the other legal systems with the Indian one, one can tell where the Indian system is lacking. The gender-neutral approach to sexual assaults in the UK, Canada, South Africa, Germany and Australia among others without permission of consent gives the architectural aspect. Equal protection is possible and these models underpin laws that ensure equal protection under the law. With the ongoing changes in both the international law and the assumptions of the constitution's, it is apparent that India is not able to sustain itself any longer on the basis of classifications on gender.

The combination of legal, historical and constitutional factors has shown a systemic fault in the India legal system. Sexual Crime Legislation is gender-based and this aspect contributes to the tropes of victimization and the belief that sexual crimes predominantly occur in males. The consequences of this absence include underreporting, institutionalising exclusion, and denial of justice and subsequently reinforce systemic inequality. The only way to bridge this is by reconsidering the current legal systems in terms of the constitutional requirements and current re-conceptions of human dignity and equality.

3. CONSTITUTIONAL ANALYSIS OF THE EXCLUSION OF MALE SURVIVORS

⁸ Bharatiya Nyaya Sanhita, 2023, s 63.

⁹ Criminal Law (Amendment) Act, 2013.

¹⁰ Indian Penal Code, 1860, s 377 (Repealed).

¹¹ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

¹² Constitution of India, art 14.

¹³ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

¹⁴ Constitution of India, art 21.

¹⁵ *KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

¹⁶ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

Based on the needs that are contained in Articles 14 and 21 of the Constitution of India, the fact that the judicial system fails to apply the law of sexual offences to male victims is an important constitutional issue.¹⁷ Basic rights are meant to enable the safety of every person, irrespective of his/her sex. The very principle of equality, respect and the freedom of individuals is broken as the sexual offence laws are skewed against female victims and they cannot even pursue justice.

Article 14 assures that the state should not act at will and protection under the law is equal. Any legislative categorisation must satisfy the two nexus tests, the intelligible differentia nexus and the rational nexus with an object nexus in order to be valid.¹⁸ The defining of rape between male and female victims in *Bharatiya Nyaya Sanhita, 2023* has a different meaning. Although this kind of classification could have been applied effectively in the past as a form of discrimination protection in order to tackle the issue of violence against women, it cannot be applied to the current scenario because of its issues surrounding its constitutionality. Overall, sexual offence laws are aimed at stopping and criminalising the violations of human dignity and autonomy in connection to their bodies irrespective of the gender of an individual. In this regard, the intent of the law has nothing to do with the reality that male victims are not taken into consideration when domestic violence is considered.

The absence of arbitrariness has been ensured by the Supreme Court which has applied Article 14. The Court rules that arbitrary government action is inconsistent with Article 14 that is, in the case of *E.P Royappa v. government of Tamil Nadu*.¹⁹ The ruling in *Maneka Gandhi v. Union of India* encouraged this notion further by broadening the definition of equality to employ reasonableness and equity.²⁰ Based on these considerations, it seems that the choice to remove male survivors is arbitrary in that it treats other similarly-positioned individuals unfairly by not offering legal protection to a group based on the nature of harm that they have suffered as opposed to gender.

The right to live with dignity, privacy and autonomy of the body on a broad understanding are all found in the right to life and personal liberty as could be found in Article 21.²¹ The victim is not of any particular gender but all the victims of sexual abuse are denied their rights. In addition to the importance of bodily autonomy and personal choice, it was highlighted by the Supreme Court of India the right to privacy in the case of *Justice K.S. Puttaswamy v. Union of India*.²² A reaffirmation that the basic right to exercise personal control over a body was a constitutional protection factoring gave us a step towards the rights based awareness of personal liberty. Similarly, in *Navtej Singh Johar versus Union of India*, the Supreme Court held that certain groups, especially those that had been historically marginalised had no right to access constitutional rights such as dignity and autonomy.²³

Since male victims of sexual assault are not recognized as victims and cannot access any legal redress, they show no interest in this problem, which evidences their disrespect toward such victims. This translates to loss of respect and control over the body since male victims are not accorded the same protection under the law as female victims. The effectiveness of fundamental rights is diminished as a result of this exclusion, which separates constitutionally protected rights from the laws that provide protection.

Indian constitutional law has also seen an advancement in the concept of substantive equality beyond legal equality and aims at addressing the disadvantages of the systemic nature. Substantive equality requires that women should not be given protection to the detriment of other groups although this is not what gender-specific laws were originally intended to accomplish. All types of safeguarding legislation are to rest on the principle of equality, but not the gender, which was observed in the cases of *Anuj Garg v. Hotel Association of India*.²⁴ This only continues to give attention to the male survivors still and perpetuates negative stereotypes which are contrary to the concept of substantive equality and imply some unspoken assumptions that males have a lesser likelihood of being victims of sexual assault.²⁵

Individual freedom and sexual freedom have grown further by the new legislative trends of the country. In this view of privacy and dignity and consent as the main pillars of the constitution, instead of the identity of the victim, that would be the autonomy, which ought to be used as the foundation to come up with criminal liability in sexual offences. Nevertheless, there exists an anomaly between the constitutional principles and the requirements of the legislation as the current legal framework has failed to sufficiently consider these changes. The failure by the legislators to respond appropriately in enacting gender-neutral benefits has taken place even though the courts have been more accommodative when it comes to applying the basic rights.

The problem of legal invisibilization is pointed out by the prescribed discrepancy between the constitutional stipulations and the legislative action. Even the protection of personal rights is proscribed in the Constitution but it is the task of the legislature to implement such safeguards. This principle of equal protection is subverted in male survivor cases because it lacks universal legal

¹⁷ Constitution of India, arts 14, 21.

¹⁸ Constitution of India, art 14.

¹⁹ *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

²⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

²¹ Vibhute and Mahajan, *Textbook on Criminal Law* (Eastern Book Company, 6th edn 2020).

²² *KS Puttaswamy v Union of India* (2017) 10 SCC 1.

²³ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

²⁴ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

²⁵ Javaid, *Male Rape, Masculinities and Sexualities* (Palgrave Macmillan 2015).

recognition and is a sign of inability to legislate. It questions the role of the state in offering access of the judicial system to all citizens.

An equitable, respectful, and system of sexual offences based on autonomy has to be the foundation of a constitutional coherent approach to it. Owing to this, we must drop the stereotypes related to gender and apply a paradigm that will realise the significance of these rights to everybody. When we increase the scope of protection of the law so that it applies to every victim of sexual abuse, there would be no undermining of the purpose of safeguarding women in a gender-neutral treatment. This provides that the law considers damages but not identity which corresponds to the constitutional aim of substantive equality.

Finally, the Articles 14 and 21 of the Constitution are of serious concern since the laws of sexual crimes do not apply to male victims.²⁶ These rules are gender-specific and contribute to many negative stereotypes, the diminished liberty and dignity of individuals, and the provision of an unequal playing field. The revision of the legislation has lagged behind numerous court rulings which have shown a solid base to have understanding of the core of fundamental rights and thus a gap has always existed in the values and practice of the constitution. This gender disparity would be bridged by creating a gender-neutral legal system that prioritises the victims and grants all equal protection before the law and access to equal law and justice.

4. LEGAL AND SOCIETAL CHALLENGES CONCERNING MALE VICTIMS OF SEXUAL OFFENCES IN INDIA

Traditionally, speaking about sexual assault in India, the discussion has been gendered, where both the male aggressors and female victims are revealed. Although such a framework has a valid rationale of dealing with pervasive violence experienced by women, it has led to the marginalisation and the legitimisation of male victims. Male victims of sexual abuse experience structural impediments in their justice and recognition by the justice system, such as gender-neutral laws and gender-defined preconceptions in the society.

Among the biggest issues is that the sexual offence laws are being developed on a gender biases basis. The concept of rape, which is prevalent in 2023 and that singles out women as victims, is still present in the Bharatiya Nyaya Sanhita.²⁷ It doesn't matter how big or little the offence is; this will always exclude male victims. The gender-neutral definition was created even though the criminal law was repealed in 2012 as a response to the Delhi gang rape case that prompted creating a more inclusive definition of sexual crimes and the culture of consent.²⁸ Thus, the law creates a paradox on the one hand attempting to safeguard a victim of sexual assault; on the other hand, it disregards a clear group of victims and takes all ties between the two to gender.

The only possible mitigation that male survivors have to the impact of sexual assault lacks adherence to the severity of the issue, as the only existing legislation is assault and criminal force. Section 377 of the Indian Penal Code was briefly applied in rare cases of male victimization of non-consensual acts before being partially struck down.²⁹ Consensual same-sex acts were decriminalised and the clause was knocked down after the momentous verdict of *Navej Singh Johar v. Union of India*. Although this ruling was a enormous victory in constitutional rights, it still created a gap in the legislation concerning male offenders and non-consensual sex acts; no such like clause is currently in place.³⁰ The use of left over supplies brings a discontinuity in legal consequences and diluted the severity of the crime.

Masculinity norms and cultural preconceptions contribute to male survivors' marginalisation. Conventional perception is that men are built to be strong and they can never be victims of sexual assault, thus, male victims of sexual assault subtly fear to come out and report the case. Distrust, contempt or embarrassment in connection to those that do report is a way of smothering those who would stand up.³¹ The belief that men ought to stand up to defend themselves adds to the victim blaming and minimizing their lives. Male survivors are less likely to come forward and report sexual assault due to various reasons, which include social shame and lack of resources.³² The invisibility cycle then sustains the invisibility due to the failure to report male victimisation appropriately thus perpetrating the image that such cases are infrequent.

The institutional barriers are another critical issue, which impacts the capacity of people to access justice. So far the redressal framework in India has been biased towards female victims, and there is absolutely no mention of male victims. Although it offers a systematic framework to address the issue of workplace harassment, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 spells out clearly that only women will receive protection.³³ Therefore, sexually harassed

²⁶ Constitution of India, arts 14, 21

²⁷ Bharatiya Nyaya Sanhita, 2023, s 63.

²⁸ Justice JS Verma Committee Report (2013).

²⁹ Indian Penal Code, 1860, s 377.

³⁰ *Navej Singh Johar v Union of India* (2018) 10 SCC 1.

³¹ Aliraza Javaid, *Male Rape, Masculinities and Sexualities* (Palgrave Macmillan 2015).

³² *ibid.*

³³ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

males lack formal avenues through which to file a complaint and, therefore, they have to manoeuvre organisational boundaries, which might not be sufficient or sensitive to address their needs.

Moreover, police agencies are rather unprepared and unsympathetic when it comes to dealing with the situation of male victims. Secondary victimisation can take place when law enforcement officials fail to investigate or decriminalise victimisation. Poor documentation and challenges in proving cases with male victims are all the consequences of equally faulty medical and forensic systems, in which the analysis procedures are largely female-centered. Such institutional problems work against both, the criminal justice system and reporting.

Another factor is restrictions by the courts. The court has recognised the importance of respect, independence, and physical integrity in a number of seminal decisions, but it has mostly refrained from providing direct protection to male survivors who do not have statutory coverage. In the *Sakshi v. Union of India*, the Supreme Court took into consideration the necessity to make the definition of the sexual abuse more comprehensive; nevertheless, the Supreme Court accepted the enormous reform, delegating it to the legislature.³⁴ This illustrates the issue of judicial interpretation as far as filling in the blanks that basic legislation leaves behind is concerned.

Real-life challenges of implementation do not facilitate access to justice. Whenever male survivors express their concerns, in most cases their concerns are either not addressed at all, or re-innovated as minor violations. Where male victims are concerned, prosecution and conviction is minimal since there is no standard procedure of investigating and gathering evidence. The latter reason makes the victims even more discouraged to take legal action.

Gender-neutral approach is not only possible but also effective as evidenced by the comparative systems of law. In certain nations, including the United Kingdom and Canada, the right to consent-based and gender-neutral interpretations of sexual assault has offered equal protection under the law to victims of sexual assaults. These systems are based on inherent qualities of the act and lack of permission instead of victim identity and, in these traditions, on the postulates of equality and dignity by legal processes.³⁵ All these models demonstrate the way Indian law was inappropriate and how it has to be corrected.

Article 14, 15 and 21 of the Indian constitution give issues regarding the possible constitutional implications of the male survivor exemption.³⁶ Denying male victims equal resort to the law as the female victims could be perceived as an unequal treatment as the protection in Article 14 upholds equality within the law. Although it is only allowable to protect women through discrimination, the effect this ought to have should not be the total exclusion of other groups, which is unacceptable in Article 15. Article 21 guarantees the right to self life and liberty which includes the right to own self-body and the respect that goes with it.³⁷ The failure to recognise male victimisation demonstrates inconsistency between constitutional values and law reality as it goes against the basic constitutional rights of protection.

In conclusion, the complicated situation of male survivors of sexual assaults in India being rendered invisible is influenced by a lack of laws, cultural stereotypes, institutional shortcomings, and constitutional contradictions. The introduction of gender neutral legislation, sensitising of institutions and exposing the entire society are all issues that would require holistic solutions. Such moves are only what will put the victims of sexual abuse under equal protection, dignity and justice.

5. JUDICIAL RESPONSE AND CASE LAW ANALYSIS IN INDIA

In India, the meaning and decision as to the scope of the legislation of sexual offences depends much on the courts. Though the lawmakers may be providing the framework behind the legislations in statute, it is the courts that interpret how these legislations would work out in practice.³⁸ When it comes to male victims of sexual offences, judicial interpretation is particularly crucial as current legislation frameworks do not explicitly acknowledge males as victims. There is a robust basis on the encouragement of gender-inclusive legal defense even though the principles in the constitution stated under such an occurrence are not clear on the role of male survivors.

Considered one of the earliest and most influential judicial interventions in the subject, the Supreme Court did not provide a specific law but dealt with the problem of sexual harassment in the workplace in the case of *Vishaka v. State of Rajasthan*.³⁹ To identify sexual harassment as a violation of basic rights, necessitating the violation of Articles 14, 15 and 21, the Court developed the Vishaka Guidelines.⁴⁰ This is what people termed as a watershed decision in safeguarding those who are victims of sexual harassment as well as extending Article 21 to encompass the right to life with dignity.⁴¹ The paradigm that developed in this case was however clearly skewed towards women as it only viewed them as victims. Along with creating a void in the legislation, it

³⁴ *Sakshi v Union of India* (2004) 5 SCC 518.

³⁵ Sexual Offences Act 2003 (UK); Criminal Code (Canada).

³⁶ Constitution of India, arts 14, 15, 21.

³⁷ Constitution of India, art 21.

³⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

³⁹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

⁴⁰ *ibid.*

⁴¹ Constitution of India, art 21.

influenced the further acts including Sexual Harassment of Women in the Workplace Act of 2013 by giving some authority to the given premise that sexual harassment remains a mostly gender issue.⁴²

In a parallel case, the case of *Rupan Deol Bajaj v. KPS Gill* considered an offence of insulting a woman modesty which is a crime against Indian Penal Code 354.⁴³ Since even a single occasion of the inappropriate touching of the body could be considered as a crime, according to the court ruling, the definition of sexual harassment was broadened. The need to safeguard dignity and physical integrity of the people was highlighted by the outcome of the case and the role of law in curbing sexual misconduct was enhanced. The subjective interpretation of the law places an interpretive structural constraint which is highlighted by the fact that even the concept of modesty being a gendered norm cannot be enforced on male victims.

The Indian Supreme Court overturned the constitutionality of the *Hotel Association of India v. Anuj Garg* carefully-considered case and set substantive equality as a constitutional right of women by their constitutional law, thereby declaring the right of women to patronise alcohol-serving establishments.⁴⁴ The Court disagreed to the paternalistic explanations of gender but emphasized the constitutionality of protection laws based on the equality principles. The fact that it contributes to creating a more inclusive coverage of the law and shows that gender roles are inaccurate has broader implications on male survivors. The case highlights the fact that laws are not supposed to be based on principles of vulnerability, but rather be in the service of the people.

In the case of *Justice K.S. Puttaswamy v. Union of India*, another important development is worth noting in that they have increased their right to privacy and liberty and their bodies under Article 21.⁴⁵ Together with the respect, independence, and the freedom of oneself, the Supreme Court acknowledged the right to privacy as one of the main human rights. The proclamation that people have a right to self-rule over their bodies and to make their independent decisions without government interference has far-reaching implications to the definition of sexual offences. All cases, irrespective of the gender of the victim, should be subject to the constitutional argument that the non-consensual sexual acts are what breaks fundamental rights due to the existence of the bodily autonomy.

The Supreme Court of India had a significant constitutional law interpretation decision interpreting Section 377 of the Indian Penal Code in such a manner that it decriminalised consensual same-sex relations in the case of *Navtej Singh Johar v. Union of India*.⁴⁶ The Court promoted respect, equality, and sexual autonomy and threw out the societal morality as an argument to limit fundamental rights. Although this ruling was a step in the right direction, it did have an impact on male survivors as well as LGBTQ+ persons. Prior to this judgement, Section 377 was sometimes used in circumstances when the victim was selected by a man without their agreement. As there is no established, gender-neutral statute that deals with these categories of crime as of today, the statute partially nullified resulted in the creation of a loophole in the legislation. In the meantime, the ruling gives credit to the notion that constitutional rights must be granted to everyone, hence, justifying the concept of the change in the legislation, which affects everybody.

The judicial opinions indicate that there is a two-pronged trend, despite the reality that these reforms are being undertaken. To begin with, by incorporating the principle of respect of individuality, privacy and autonomy of the basic rights as entrenched in the constitution, the role of the courts in the scope of those rights has been greatly extended, especially in Arts 14 and 21. Conversely, statutes on males excluding the scope of protection conferred by the court on male victims are also open to court interpretation. Though the Supreme Court in *Sakshi v. Union of India* has concurred that the definition of sexual abuse should be expanded, it has left the manner in which reforms have to be done to the legislature.⁴⁷ The case demonstrates that the judicial intervention is essential in cases where it is prohibited expressly by the legislature.

The courts need to be more judicial given the gap between the constitution and the statute law. The standards in the *Vishaka* decision were formulated outside the legislation, showing that Indian courts had already attained the capability of sealing the gaps in the law. This could also be applied to identify the male victimisation by proposing a gender-sensitive interpretation of the laws as they stand. The courts can use the constitutional ideas such as Articles 14 and 21 to safeguard each with minimum reference to scope of the law by limiting legal actions to gender-based assumptions.⁴⁸

Conclusively, the court has been a game changer in the context of sexual offence legislation in India, broadening the concept of dignity, autonomy as well as equality. Nevertheless, the gender specificity of the laws, which have currently taken effect, still poses a set back on its approach and the disconnection between ideals of a constitution and how they can be practically employed. The courts continue to give minimal attention to cases concerning male victims despite historic rulings offering a good basis on which

⁴² Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act 2013.

⁴³ *Rupan Deol Bajaj v KPS Gill* (1995) 6 SCC 194.

⁴⁴ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

⁴⁵ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁴⁶ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁴⁷ *Sakshi v Union of India* (2004) 5 SCC 518.

⁴⁸ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

to do so. A change in the law and a more active and broader approach of the judiciary is needed to ensure all victims of sexual assaults receive equal legal protection.

6. COMPARATIVE ANALYSIS OF SEXUAL OFFENCE LAWS

United Kingdom

In the UK, the Sexual Offences Act of 2003 has undergone far-reaching amendments, with an aim of making it more consent-based and gender-neutral. The absence of permission and the act itself tends to define sexual offenses, as opposed to the victim.⁴⁹ Sexual assault and assault by penetration are other means of ensuring that male victims are not left behind under the law although crime of rape is reportedly restricted to penetration with the penis. A case study of individual agency is initiated with statutory definition of consent which is the voluntary agreement made in cases where the potential decision maker is free and has the mental capacity to make the choice. *R v. Bree* judicial interpretation extended the concept that no consent is valid when the capacity is absent, e.g., it is not valid when a person is drunk.⁵⁰ This framework can help us abandon old stereotypes of traditional gender roles, and to view sexual assault more complexly.

Canada

In its criminal code, Canada has formally foregone the gender-specific use of the term rape in favour of the broader use of the term sexual assault. This construction puts a strain on fast and unanimous endorsement and it fits everywhere. Silence or the lack of action of a person should not be taken to imply consent as was ruled in *R v. Ewanchuk*.⁵¹ In *R v. JA* the Court also pointed out that it must not grant permission prior to an act being committed when the victim is asleep; instead the permission must be continuous.⁵² This field of law can be seen as efforts to implement substantive equality by supporting sexual autonomy of victims and granting equal legal status to all victims, males included.

South Africa

To exemplify a paradigm that is founded on the constitution, it is possible to consider the Criminal Law (Sex Offences and Related Matters) The 2007 Amendment Act of South Africa where rape is defined loosely and regardless of gender.⁵³ Irrespective of the gender of the victims or the aggressors, rape is any kind of penetration without consent as defined by the law. This practice is closely related to the rights to equality, freedom and dignity guaranteed by the Constitution. In *S v. Masiya*, the Constitutional Court broadened the definitions of the sexual offences, acknowledging the weaknesses of the traditional categories.⁵⁴ This example of the South African system shows how the constitutional principles can directly influence the victim-focused and inclusive policies.

Australia

Sex offences are not gender based but seen as non-consensual activity, which is reflected in many Australian laws, including the Crimes Act 1900 (New South Wales) and others, and demonstrates the generally gender-neutral attitude of the nation.⁵⁵ The latest amendments are affirmative consent requirements, which further safeguard all victims by mandating an express and voluntary one. The *R v. Lazarus* case highlighted the importance of active involvement and it was concluded that passive acceptance is not a consent.⁵⁶ A case in point of a unified system of laws, combining criminal and civil punitive systems, are civil laws, e.g. the Sex Discrimination Act of 1984, which strives to prevent sexual harassment in people regardless of their gender.⁵⁷

Germany

The German Criminal Code was revised in 2016 to include a new model based on the "No means No" concept, which requires consent as its basis.⁵⁸ In this modification, there is no need to establish that they physically opposed the act instead, it is enough to establish that the behavior was performed regardless of what the individual claimed to want. The model does not discriminate boys and directly considers male survivors. The other school of judicial interpretation has provided an insight by increasing the breadth of protectivity, in citing that coercion could be in a variety of forms including psychological. These alterations were the reaction of

⁴⁹ Sexual Offences Act 2003 (UK).

⁵⁰ *R v Bree* [2007] EWCA Crim 804.

⁵¹ *R v Ewanchuk* [1999] 1 SCR 330 (SCC).

⁵² *R v JA* [2011] 2 SCR 440 (SCC).

⁵³ Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 (South Africa).

⁵⁴ *S v Masiya* 2007 (5) SA 30 (CC).

⁵⁵ Crimes Act 1900 (Australia).

⁵⁶ *R v Lazarus* [2017] NSWCCA 279.

⁵⁷ Sex Discrimination Act 1984 (Australia).

⁵⁸ German Criminal Code (Strafgesetzbuch) (as amended 2016).

the population to such tragedies as the ones of Cologne on New Year Eve that, in turn, revealed the loopholes in the legislation and resulted in the changes thereof.⁵⁹

A global trend towards gender-neutral and consent-based paradigms is shown by a comparative examination of various countries. These legal systems do not discriminate and offer equal protection to all victims, emphasising the autonomy and dignity of the body over categories of genders. Conversely, the gender-concrete categories which India uses to create their system of law still do not include the male victims, and create a discrepancy between theory and reality in the constitution. Law makers have never taken action on the premises of sexual autonomy, privacy, and dignity which have been underscored in cases like the Navtej Singh Johar v. Union of India.⁶⁰ Surprisingly, not only can gender-neutral legislation work in India, but the protection of children as sexual victims laws proves that such a law can work successfully, as the Protection of Children from Sexual Offences Act, 2012 indicates.⁶¹

To sum up, the comparative analysis demonstrates the effectiveness of sexual offence laws when gender-neutral and consent-based approaches are adopted as they are both all-inclusive and comply with the constitutional principles. It is prudent that the Indian laws should be adjusted to help protect all those who have been sexually abused, recognized and given a fair share at the hands of justice and these global cases can provide the solutions.

7. RECOMMENDATIONS

There are certain recommendations to establish a victim-centric system, which are as follows:

1. Adoption of Gender-Neutral Legal Framework

The initial guidance suggestion is to enact legislation that characterizes sexual offences in a manner that is neither gender based. Besides constituting system of structural injustice, the present-day gender-based system of Bharatiya Nyaya Sanhita, 2023 does not respond to the needs of male victims. The law needs to reconsider the principles whereby more importance should be put on the type of behavior and the lack of consent than the gender of the victim or the offender. This would grant the equal protection of all victims by matching the legislation to the constitutional values of non-discrimination, equality, and dignity.⁶²

2. Judicial Interpretation and Constitutional Intervention

The interpretation of law by the judiciary needs to be less conservative and gender biased. Articles 14, 21 in the constitution in the particularly in the concepts of dignity, privacy, and autonomy in body, should be taken into account when placing judicial judgements to legally contemporary terms and definitions.⁶³ The decisions made by Justice K.S. Puttaswamy and Navtej Singh Johar opposing the Indian government give a solid basis on which the rights of everyone should be extended.⁶⁴ Litigation founded on selective constitutional activities could also be helpful to confront the exclusionary acts and encourage legislative reform.

3. Mechanisms for Inclusivity and Institutional Change

There is a need to reorganise the institutional systems in a more inclusive way. Both the legislation protecting against harassment in the working area and the complaint resolution systems must be made to embrace the male victims in addition. Gender-neutral rules and processes have to be defined by administrative bodies as well as Internal Committees. The law enforcers, the judges and medical workers should also be trained and educated to be in a position to handle and comprehend the special needs of male survivors.

4. Organizing Survivor Support Networks.

Male survivors require that male and female support structures be put in place. This includes helplines, crisis centers, counselling services and victim compensation schemes. In order to be accessible and effective, the support systems should be incorporated into the existing institutional and legal frameworks. Improvements in reporting and recovery rates have been associated with the use of legal and psychological assistance.

5. Become more culturally and socially conscious.

Social revolution should be followed by a reform in the law. There is a dire need of educational programs and civic education campaigns concerning victimisation and masculinity. Also society must understand that sex advances have no boundaries in relation

⁵⁹ Cologne New Year's Eve assaults.

⁶⁰ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

⁶¹ Protection of Children from Sexual Offences Act 2012.

⁶² Bharatiya Nyaya Sanhita 2023.

⁶³ Constitution of India arts 14,21.

⁶⁴ *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

to gender, they must do more to reduce stigmatisation of male sex assault victims. It is vital to have a deeper comprehension of sexual assault, and the media, learning institutions, and civil societies have a role in this.

6. Additional or Specific Laws Passed

Firstly, there is an urgent need to change existing legislation or have new legislation that directly identifies male victims of sexual harassment and assault. Such a system should have prohibitory measures, remedial measures and preventive measures in addition to protection against misuse. In particular, gender-neutral policies are perceived as further strengthening women legal protections, rather than weakening them.

7. Standards for Lawmaking

THE SEXUAL HARASSMENT OF MEN (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2026

A BILL

To be safeguarded on sexual harassment of males, to hear complaints, to punish and compensate, to prevent and prohibit sexual harassment, to receive remedy on complaints, and about related matters or related.

PURPOSE/TO JUSTIFICATION STATEMENT.

When people are sexually harassed, their rights to bodily autonomy, equality and dignity are infringed. Although the Indian law has gone a long way in recognising and dealing with the issue of women being sexually harassed, today there are no legal systems that help male victims in their cases. Male victims of sexual harassment in the workplace and elsewhere are invisible due to social stigma and misconceptions about gender and also legal hesitation to report the incident. The Indian Constitution has provided that everyone has a right to live in dignity and equality under the law. It is an urgent requirement to have gender-inclusive legislative framework to offer preventive, prohibitive, and corrective measures and recognition and support to male survivors.

This bill will help seal this legal gap by defining sexual harassment of men, establishing the procedures in which complaints can be filed, the punishment and compensation rate, and ensure that victims of such acts are not abused.

Section I - Preliminary

Part 1 - General Introduction, Excursion, and Background.

This bill is also known as the Sexual Harassment of Men (Prevention, Prohibition and Redressal) Act, 2026.

It includes the entire India.

Once the date is announced by the Central Government it will come into effect.

Part 2 - Explanations

Unless otherwise indicated by the context, in this Act:

(a) An irate individual An allegation made by any man that such a man has been sexually harassed; (b) Sexual harassment is any unwelcome thing or behaviour, whether directly or indirectly, namely- (i) a touching gesture and advances; (ii) a call or a request to sexual favour; (iii) any sexually coloured comment or showing of pornography; (iv) anything else that is of physically, verbally

Part II: Prevention and Prohibitions.

Part 3: Protections against sex harassment.

Sexual harassment of males will be eliminated in the workplace, and the authorities, as well as the employers, will put all their might into stopping the practice through different strategies, such as educating and raising awareness.

Article 4 - Sexual Harassment is not allowed.

There should be no location or organization where any form of sexual harassment is accepted towards male employees.

Every Other Part: Committee Organization.

Subsection 5 - Committee Within the Company.

A facility will have Internal Committee as long as the number of people it employs is 10 or above.

Sat on the Committee:

They include an officer to preside over, two employees and a third party, who is not biased, e.g. a social worker or lawyer.

An individual who is a lawyer is needed.

Chapter 6: The Local Council.

A Local Committee led by the District Magistrate will be created in cases that involve the unorganised sector and lawsuits on the employer side.

representatives of the district administration and representatives of civil society will make up the Committee.

Problems and Enquiries (Chapter IV)

Part 7: Recommended Workflow.

Also a put out man is allowed three months after the incident date to submit a written grievance but such time could be mailed to the reasons of validity.

Part 8: The procedure in carrying out an investigation.

Under the principles of natural justice, the Committee would investigate in a transparent, unbiased and time-limited way.

Part V: Redress, Penalty, and Compensation.

The 9th Section: Temporary Relief

Although an investigation has been started, the Committee can suggest a change of place, leave or other precautions.

Section 10-Sanction

The Committee may propose in situations whereby sexual harassment has been proved:

Examples of penalties are as follows: (a) written apology or warning; (b) Withholding pay or money; (c) firing or fines; and (d) in necessary situations, criminal prosecution.

Compensation (Section 11)

The Committee will decide on the level of compensation that should be given to the aggrieved man and this will depend on the following considerations:

The costs of treatment and care available; pediatric distress and mental pain; work disadvantage;

Income and financial ability of the respondent over the years.

Protection in this Chapter.

Article 12-False or Evil Claims.

Even though the complainant stands to be punished should his/her complaint be adjudged as being malicious after investigation; it should not be punitive in case he/she fails to produce adequate evidence to prove his/her accusation.

Part 13: Private Information

Privacy of the individuals and processes ensured.

Unclassified Matters (Chapter VII)

Section 14 - Supplementary to Other Laws.

Instead of repealing, this act will merely add to the current laws.

Rule-Making Authority (Section 15)

This Act implementation could be governed by the Central Government.

Note on Analysis

The proposed bill is a fantastic structural and normative response to solving the legal invisibility of male survivors. Making clear recognition, well prepared procedures of complaints, institutional responsibility and psychological help also fulfills the constitutional duties as stated in Articles 14, 15 and 21.⁶⁵ In addition to this, it supplements the already existing acts against sexual harassment in the workplace, like Sexual Harassment of Women at Workplace Act 2013 by eliminating its gender biases and promoting more inclusive and fair acts.⁶⁶

8. CONCLUSION

The second issue of Indian criminal law that is under-discussed is the attitude towards male victims. Findings of this research indicate that legislations that were supposed to curb acts of violence against women have changed drastically though they remain on a gender sensitive paradigm that fails to offer the protections to male identities that are victims of violence. Beyond the legislative gap, perceived and recognized sexual assault in India is conceptualized by greater structural, social, and institutional biases, which add to this exclusion.

The need to address equality, nondiscrimination, right to life, and personal liberty is also increased due to the lack of gender-neutral clauses in the Constitution. Articles 14 and 21 of the Indian Constitution have ensured that this right to live is enjoyed by all citizens irrespective of gender and in dignity. The judicial precedent has extended the usage of these rights persistently; most prominently, in the *Maneka Gandhi v. Union of India* and *Navtej Singh Johar v. Union of India* cases the Supreme Court repeated the significance of individual liberty, autonomy and dignity as primary provisions of the Constitution. Regrettably, these ideas have not been well incorporated in the statute law, which has resulted in the disjunction between a constitutional requirement and relatively guaranteed statutory provisions.

The social stigma that women are victimised and that men are strong and capable of nothing (sexually) is the source of the invisibility so that male victims feel, as established in the article. This leads to a silence cycle due to these false perceptions, which discourage reporting and create stigma. As law enforcement and workplace grievance processes, institutional processes, such as those primarily affecting female victims, make it hard to access Justice by male survivors.

The analysis of the ways other nations have implemented gender-neutral and consent-based strategies suggests that inclusion can be made without undermining the protection of women. These theories propose that it is a crime against a person since it contravenes their right to bodily autonomy and dignity, irrespective of the gender. These models and gender-neutral laws such as the Protection of Children from Sexual Offences Act of 2012 are the way to reform in India. As demonstrated in the proposed bill in this paper, a gender-neutral legal system that grants equal protection under the law and is also easy to comprehend and implement is achievable. It goes further to prove that altering the law is not only possible, but it is a feasible idea.

Finally, the sexual crime laws still fail to cover male victims which nullifies the basic assurance of equality and justice. Instead of de-escalating the seriousness of violence against women, when male victims are named, the legal system becomes stronger to be able to adapt to all the abuse. It requires a gender-neutral and victim-focused approach that would help to narrow the gap between the aspirations established in the constitutions and the realities of law. To the extent that the Indian legal system cares about upholding its promise of respect to the liberty of an individual, equality before the law, and dignity, it needs to make this transformation.

REFERENCES

1. H. M. Seervai, *Constitutional Law of India*, 4th ed., Universal Law Publishing, 2013.
2. V. N. Shukla, *Constitution of India*, 13th ed., Eastern Book Company, 2017.
3. K. D. Gaur, *Textbook on Indian Penal Code*, 6th ed., Universal Law Publishing, 2016.
4. Ratanlal & Dhirajlal, *The Indian Penal Code*, 34th ed., LexisNexis, 2017.
5. Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 8th ed., Oxford University Press, 2018.
6. A. Bajpai, "The Imperative of Gender Neutrality in the Bharatiya Nyaya Sanhita, 2023," *Statute Law Review*, 2025.
7. M. Yadav & H. Babbar, "Toward Inclusive Justice: Gender Neutrality in Indian Sexual Offence Laws," *MSW Management Journal*, 2025.

⁶⁵ Constitution of India arts 14,15,21.

⁶⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

8. D. Kaur & S. Gill, “Gender Neutrality in Sexual Offences Law in India: A Critical Analysis,” *Indian Journal of Legal Review*, 2025.
9. S. Singh, “Gender Neutrality in Sexual Offence Laws: A Critical Legal Analysis,” *Lawful Legal*, 2026.
10. M. S. Tomar, Need for Gender Neutrality in Sexual Offences Law in India, *National Law School of India University*, 2023.