



Research Article

WHEN THE LAW LEAVES MEN BEHIND: MALE SEXUAL ASSAULT, THE DEATH OF SECTION 377, AND THE SILENCE OF THE BHARATIYA NYAYA SANHITA

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ABSTRACT

On the night of June 17, 2026, a thirty-year-old man undergoing chemotherapy for bone cancer was stopped at a police checkpoint in Kurukshetra, Haryana. What followed — alleged stripping, targeted assault on his cancer-affected leg, and sodomy inside a police station — should have been prosecuted as sexual assault. It was not. The First Information Report (FIR) registered against the three accused — ASI Sanjeev Kumar, ASI Rajender Kumar, and Home Guard Sumit — invokes only Section 114 of the Bharatiya Nyaya Sanhita (BNS), 2023, which pertains to simple hurt. The reason is both simple and consequential: there is no provision under Indian criminal law today that criminalizes the sexual assault of an adult male. When the BNS replaced the Indian Penal Code (IPC) in July 2024, Section 377 — the only provision that, after the Supreme Court's partial reading-down in *Navtej Singh Johar v. Union of India* (2018), still criminalized non-consensual carnal intercourse against adult men — was deleted in its entirety, and nothing was put in its place. Drawing on the Kurukshetra case as an illustrative starting point, and situating it within the wider doctrinal and comparative literature on gender-neutral sexual offences, this article examines how that legislative void was created, what it means for male victims, why the omission was not accidental, and what legislative and judicial pathways are available to address it.

INTRODUCTION

India's new criminal code was unveiled with considerable fanfare. The Bharatiya Nyaya Sanhita, 2023, was presented as a modern, indigenously conceptualized replacement for the colonial-era Indian Penal Code, 1860. Union Home Minister Amit Shah repeatedly described the reform as a shift away from a "slave mentality" and toward a framework rooted in Indian values and contemporary constitutional morality. Among the stated objectives in the BNS's own Statement of Objects and Reasons was a commitment to move toward gender-neutral offences.

The new law arrives at the opposite result in one critical domain. When a cancer patient was allegedly sodomised by police personnel inside the Ladwa police station in Kurukshetra, Haryana, and his complaint specifically alleged sodomy, the investigating officer acknowledged the allegation — and then confirmed that it would make no legal difference. Deputy Superintendent of Police Nirmal Singh told ThePrint (2026) that even if the allegation of sexual assault were established, there was "no penal provision available under the new laws" to prosecute it.

That statement, made by a senior police officer while heading the Special Investigation Team (SIT) constituted in the case, is treated in this article as the empirical starting point for a broader doctrinal argument: that the omission of any gender-neutral sexual offence from the BNS is a structural defect rather than an isolated failure of one case.

THE KURUKSHETRA CASE: FACTS AND IMMEDIATE FALLOUT

The victim, a resident of Bangaon village in Kurukshetra, worked in the loan section of HDFC Bank and was undergoing chemotherapy for bone cancer in his left leg. On the night of June 17, 2026, he was returning home on his motorcycle when a Home Guard on duty at the Indri naka stopped him for covering his face with cloth. A Dial-112 police team arrived shortly thereafter, reportedly in a vehicle without a number plate. According to the victim's complaint filed with the Superintendent of Police, at least one officer appeared to be under the influence of alcohol.

The victim was slapped, taken to the police station, and subjected to escalating abuse. He told the officers he had cancer and pleaded with them not to hurt him. They allegedly stamped on his cancer-affected leg with boots, taunted him, stripped him, and sodomised him. The instruction allegedly given was explicit: "Hum koi nishaan nahi chodenge" — we will leave no marks.

The next morning, while bathing, the victim noticed he was bleeding. Out of shame and fear, he told no one at first. When his condition deteriorated, his family took him to the Community Health Centre in Ladwa; he was subsequently referred to Kurukshetra Civil Hospital and admitted to Lok Nayak Jai Parkash (LNJP) Hospital, where Dr. Sarah Aggarwal, Principal Medical Officer, confirmed a fractured arm and persistent internal bleeding requiring specialised treatment.

The institutional response was swift in some respects. The Kurukshetra Superintendent of Police, Chander Mohan, visited the Ladwa police station, and the three implicated personnel were placed under suspension pending an SIT inquiry. What was conspicuously absent was any charge reflecting the sexual nature of the alleged crime: the FIR invokes BNS Section 114 alone — voluntarily causing hurt — an offence that is bailable, non-cognizable, and carries a maximum punishment of one year's imprisonment and a fine of ten thousand rupees.

The police have noted that the victim declined further medical examination and did not record a statement before the SIT; the accused have offered a different version of events, asserting that the victim was intoxicated and argumentative. These are disputed questions of fact for the appropriate forum to determine. What is not a question of fact but of statute is that, even taking every allegation as proven, no sexual assault charge is presently available under Indian law when the complainant is an adult male.

THE ARCHITECTURE OF SECTION 377: HISTORY, PURPOSE, AND THE 2018 WATERSHED

To understand the legal void that the Kurukshetra charging decision illustrates, it is necessary to trace what Section 377 of the IPC was, how it evolved, and what survived it after the Supreme Court's 2018 intervention.

Section 377 was introduced into the IPC in 1861 under British colonial administration, modelled partly on a sixteenth-century English statute enacted during the reign of Henry VIII. It provided:

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

For over a century and a half, Section 377 served a dual and, as legal scholarship has since documented, deeply contradictory function. It was systematically used to criminalise and harass consensual same-sex relationships — a grave violation of constitutional rights — while simultaneously providing the only available penal provision for prosecuting non-consensual sexual acts against adult men, transgender persons, and acts of bestiality (Pathak, 2016).

The first major constitutional challenge came in *Naz Foundation v. Government of NCT of Delhi* (2009), where the Delhi High Court held that Section 377, insofar as it penalised consensual sexual conduct between adults, violated Articles 14, 15, 19, and 21 of the Constitution. This was reversed by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2014), which reinstated the provision in full.

The definitive resolution came in *Navtej Singh Johar v. Union of India* (2018). A five-judge Constitution Bench, delivering judgment on September 6, 2018, unanimously held that Section 377, insofar as it criminalised consensual sexual conduct between adults in private, was unconstitutional, violating Articles 14, 15, 19(1)(a), and 21. Critically, the Court did not strike the provision down in its entirety: it expressly preserved Section 377's application to non-consensual sexual acts against adults of any gender, sexual acts against minors, and bestiality.

Until July 1, 2024, this reading-down meant that adult male victims of sexual assault retained a statutory remedy under Section 377 IPC, however imperfect. That protection was erased in full when the BNS came into force.

THE BNS AND THE LEGISLATIVE VOID: HOW THE ERASURE HAPPENED

The *Bharatiya Nyaya Sanhita*, 2023, replaced the Indian Penal Code with effect from July 1, 2024. Its provisions on sexual offences are contained in Chapter V, Sections 63 to 73, titled "Offences Against Woman and Children."

The title itself announces the problem. Rape under Section 63 of the BNS is defined exclusively in relation to a female victim, and the code's other sexual-assault provisions apply to women and children. An adult male subjected to non-consensual penetrative sexual violence has no named offence available to him under the BNS. Senior criminal lawyer P.K. Sandhir, practising in the Punjab and Haryana High Court, told *ThePrint* (2026): "Under the IPC, sexual intercourse by a male with another male, whether with or without consent, was a criminal act. If the government wanted to decriminalise it for the sake of the LGBTQ community, it could have at least included a provision for cases where a man is sexually assaulted by another man without consent. Now there is no legal provision to deal with such cases."

Table 1 summarises the resulting change in the statutory position.

Table 1. Comparative Position of Male Sexual Assault Under the IPC (Post-Navtej) and the BNS, 2023

Aspect	IPC Section 377 (as read down, 2018–2024)	BNS, 2023
Consensual adult same-sex acts	Decriminalised (Navtej Singh Johar, 2018)	Not addressed; no equivalent provision exists
Non-consensual penetrative acts against adult men	Criminalised as an "unnatural offence"	No dedicated offence; falls under Section 114 (voluntarily causing hurt)
Maximum punishment for non-consensual acts	Imprisonment for life, or up to 10 years, plus fine	Imprisonment up to 1 year, fine up to Rs. 10,000
Cognizability / bailability	Cognizable and non-bailable	Non-cognizable and bailable
Bestiality	Criminalised	No provision
Chapter heading covering sexual offences	Not applicable (general "Offences Affecting the Human Body")	"Offences Against Woman and Children" (Chapter V)

The asymmetry this creates is instructive when set against the Protection of Children from Sexual Offences (POCSO) Act, 2012, which is gender-neutral by design: neither the victim's nor the accused's gender affects the severity of the offence where the victim is a minor. The moment a victim turns eighteen, however, this protection evaporates for male victims. The same act — non-consensual penetrative sexual assault — becomes a cognizable, non-bailable offence attracting rigorous imprisonment where the victim is female, and a bailable, non-cognizable offence with a one-year maximum sentence where the victim is a man. Recent doctrinal scholarship has characterised this as more than an anomaly: Tiwari (2025) argues that the 2023 repeal did not merely remove a provision but erased the only legal recognition male victims had, leaving them, in her phrase, "legally invisible." Legal commentary in *The South First* similarly observed that by entitling its sexual offences chapter "Offences Against Woman and Children," the BNS forecloses even the possibility of a future judicial interpretation extending protection to male victims without reading against the statute's express textual limits.

THIS OMISSION WAS NOT ACCIDENTAL: THE PARLIAMENTARY RECORD

The deletion of Section 377 without replacement was not an oversight; it was a deliberate legislative choice made in the face of explicit institutional warnings.

The Department-related Parliamentary Standing Committee on Home Affairs, chaired by BJP Rajya Sabha MP Brij Lal, examined the BNS and submitted its report to the Rajya Sabha on November 10, 2023. The Committee noted that Section 377, after Navtej Singh Johar, continued to apply to non-consensual carnal intercourse with adults, carnal intercourse with minors, and acts of bestiality, and that the BNS made no provision for non-consensual sexual offences against male, female, or transgender persons in the categories previously covered by Section 377. The Committee explicitly recommended that the government include such a provision, stating that, to align with the BNS's own stated objective of moving toward gender-neutral offences, it was "mandatory to reintroduce and retain Section 377 of the IPC." The government did not accept the recommendation, and the final BNS carries no such provision.

Within Parliament, the concern was raised during debate on the bills: Hyderabad MP Asaduddin Owaisi questioned in December 2023 whether only women were subjected to stalking and rape, and whether male and transgender victims had been considered. His remarks were met with ridicule from fellow members, and the legislation passed without addressing the concern.

The resulting legal vacuum was tested in court almost immediately after the BNS came into force. In August 2024, Advocate Gantavya Gulati filed a Public Interest Litigation before the Delhi High Court challenging the exclusion of penal provisions for non-consensual "unnatural" sexual acts from the BNS. A Division Bench of Acting Chief Justice Manmohan and Justice Tushar Rao Gedela directed the Centre to treat the petition as a formal representation and to decide it preferably within six months, with Justice Gedela remarking during the hearing: "Suppose something happens outside the court today — are we all to shut our eyes because it is not a penal offence in the statute books?" Before the six-month deadline had elapsed, the Kurukshetra case occurred. As of this writing, *Gantavya Gulati v. Union of India* remains pending, listed for further hearing in early 2026 after the Union was directed to file its response.

THE CUSTODIAL DIMENSION: D.K. BASU AND THE PROMISE UNFULFILLED

The legislative gap identified above intersects with a separate and independently significant constitutional problem: the state's obligation to protect persons in its physical custody.

In *D.K. Basu v. State of West Bengal* (1997), the Supreme Court held that custodial violence directly infringes the fundamental rights guaranteed under Articles 21, 22, and 32 of the Constitution. The case arose from a letter written by D.K. Basu, then Executive Chairman of Legal Aid Services, West Bengal, to the Chief Justice of India in 1986, drawing attention to deaths and torture in police lockups; the Court treated it as a Public Interest Litigation and laid down guidelines — since codified through amendments to the Code of Criminal Procedure — governing police conduct during arrest and detention. These include preparation of an attested arrest memo, the arrestee's right to have a relative informed of the arrest, access to legal counsel, and the right to a medical examination.

Several of these safeguards appear, on the facts alleged, to have been breached in the Kurukshetra case: no arrest memo has been reported, the responding vehicle reportedly carried no number plate, and the victim was not produced before a magistrate before the alleged assault took place.

Retired IPS officer and lawyer Rajbir Deswal, commenting on the case, observed that custodial abuse follows a recognisable institutional pattern regardless of setting: "Whether in hospitals, police stations, prisons, or welfare institutions, the underlying thread is the same — authority is misused, trust is violated, and vulnerability is exploited. Custodial sexual abuse is not merely an individual crime. In many cases, it is an institutional failure." He called for extending the D.K. Basu guidelines beyond policing to every institution exercising custodial authority over a person. This observation is consistent with the broader literature on sexual offences against men in India, which similarly documents how institutions structurally unprepared to receive male complainants — whether police stations, hospitals, or detention facilities — compound the harm of the initial assault through disbelief, procedural neglect, or the absence of an appropriate charge (Tiwari, 2025).

Read together, the alleged non-observance of the D.K. Basu safeguards and the absence of any statutory offence naming the alleged conduct as sexual assault illustrate how a procedural failure and a substantive legislative gap can compound one another to leave a complainant with neither an adequate charge nor an adequately followed arrest procedure.

THE OTHER SIDE OF THE ARGUMENT: WHY SOME DEFEND THE CURRENT FRAMEWORK

A balanced examination of this issue requires engaging with the arguments made, within and outside Parliament, in favour of the current framework, or at least against reinserting Section 377 in some form. The first argument is that the deletion of Section 377 was necessary to remove a provision long weaponised against the LGBTQ+ community. This has genuine historical force: Section 377 was used for

decades to harass, blackmail, and imprison people for consensual same-sex relationships, and any reinstatement of its language risks reintroducing that capacity for abuse, particularly given inconsistent police sensitisation. Advocates of this position, including some legal scholars and LGBTQ+ rights organisations, argue that the solution is not to reinstate a version of Section 377 but to draft an entirely new, narrowly framed provision criminalising non-consensual penetrative acts regardless of the gender or sexual orientation of victim or accused, without the morally loaded and historically tainted language of "carnal intercourse against the order of nature."

The second argument concerns the BNS's framing of sexual offences as protective of women and children specifically, given that they are overwhelmingly the reported victims of sexual violence in India: National Crime Records Bureau data consistently shows that the vast majority of reported sexual assault cases involve female victims. Scholars sympathetic to gender-neutral reform, including Pathak (2016), respond that this statistical reality reflects, at least in part, the absence of legal categories that allow male victims to report what was done to them — a gap that is partly self-fulfilling, since a legal category that does not exist cannot generate reporting data. Feminist critics have, in turn, cautioned that a blanket move to gender neutrality risks obscuring the disproportionately gendered pattern of sexual violence against women; the Justice Verma Committee itself received submissions on both sides of this question, and ultimately declined to adopt a fully gender-neutral definition of rape.

A third argument, raised by the government's counsel during the Delhi High Court hearing, is that any amendment requires broad stakeholder consultation and parliamentary deliberation, and that the process is ongoing; Acting Chief Justice Manmohan suggested in the same hearing that an ordinance could be introduced if required, a route the government has not taken.

These arguments merit serious engagement, and the tension between gender-specific and gender-neutral approaches to sexual violence law is a genuine one in comparative scholarship. They do not, however, address the specific asymmetry identified in this article: that an entire category of non-consensual, penetrative sexual violence currently has no proportionate criminal remedy at all, regardless of how the broader debate about gender-neutral drafting is ultimately resolved.

CONSTITUTIONAL FAULT LINES: ARTICLES 14, 15, AND 21

The BNS's omission of any provision addressing male sexual assault engages several constitutional guarantees.

Article 14 guarantees equality before the law and equal protection of the laws. The differentiated protection offered to female victims of sexual assault (rigorous imprisonment of not less than ten years, extendable to life) as against the protection nominally available to male victims of comparable conduct (Section 114: bailable, maximum one year) does not appear to rest on an intelligible differentia bearing a reasonable nexus to the object of the law. If the object is to protect bodily autonomy and punish non-consensual sexual violence, gender-based differentiation of this magnitude is difficult to justify under the reasonable-classification test established in *State of West Bengal v. Anwar Ali Sarkar* (1952) and its successors.

Article 15 prohibits discrimination on grounds of sex. The BNS's structural decision to locate sexual offences exclusively under a chapter titled "Offences Against Woman and Children" has the practical effect of denying male victims access to the criminal law's most serious sexual-offence provisions on grounds of sex.

Article 21 protects life and personal liberty, and the Supreme Court has consistently held, from *Maneka Gandhi v. Union of India* (1978) onward, that this includes the right to live with dignity; in *Francis Coralie Mullin v. Union Territory of Delhi* (1981), the Court held that Article 21 encompasses freedom from torture and inhumane treatment. Recent doctrinal literature situates the present gap squarely within this framework: Pandey and Shekhar (2023) argue that constitutional equality provisions require legislatures to extend criminal protection against sexual violence without regard to the victim's sex, and identify the absence of gender-neutral sexual offence provisions as a live constitutional deficiency rather than a matter

of legislative discretion alone.

The pending PIL in *Gantavya Gulati v. Union of India* invokes precisely these provisions, arguing that the omission violates Articles 14, 19, and 21, and disproportionately affects vulnerable groups — including LGBTQ+ persons and adult heterosexual men — in a manner incompatible with the constitutional guarantees of equality and dignity.

WHAT REFORM MUST LOOK LIKE: LESSONS FROM COMPARATIVE LAW AND A PROPOSED LEGISLATIVE PATH

India is not alone in having confronted this question, and comparative experience offers instructive — if not directly transplantable — models.

The United Kingdom's Sexual Offences Act, 2003, defines rape in terms of non-consensual penetration with no restriction on the victim's gender, and provides a suite of related offences, including assault by penetration and causing sexual activity without consent, that apply regardless of the parties' gender. This framework has operated for over two decades and is broadly regarded as legally coherent, though implementation research in the UK has noted continuing under-reporting by male victims linked to stigma rather than to any deficiency in the statute itself.

South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, similarly adopts gender-neutral definitions criminalising sexual penetration and sexual violation irrespective of the victim's gender; the Constitutional Court of South Africa has affirmed that such an approach flows from the constitutional guarantee of equal dignity.

Canada's Criminal Code provisions on sexual assault have been gender-neutral since reforms in the 1980s, replacing a gendered rape framework with a universal offence of sexual assault graded by degree of violence and harm rather than by the sex of the complainant.

Nepal's 2018 Muluki Penal Code likewise moved toward a more inclusive definition of rape following sustained civil-society advocacy, illustrating that South Asian jurisdictions with comparable colonial-era criminal codes have found gender-neutral drafting workable (see *Journal of Exclusion Studies*, 2026, on comparative South Asian and Commonwealth trends).

The consistent lesson from these jurisdictions is that gender-neutral sexual offence law does not weaken protection for female victims; each retains, alongside its gender-neutral base offence, aggravated categories that account for the specific vulnerability of particular groups where the evidence justifies differentiation. This suggests that the choice presented in some domestic commentary — between protecting women and recognising male victims — is not, as a matter of comparative drafting practice, a binary one.

On this basis, the following legislative measures are proposed for the Indian context:

Proposed legislative measures:

1. A new, freestanding offence should be inserted into the BNS (either by amendment or through the anticipated BNS Amendment Bill) criminalising non-consensual penetrative sexual acts irrespective of the gender of the victim or the accused, carrying a custodial sentence proportionate to the existing Section 63/64 framework for rape rather than to Section 114.
2. The provision should be drafted in consent-based language, avoiding the "carnal intercourse against the order of nature" formulation associated with the repealed Section 377, so as to avoid reviving the provision's historical association with the criminalisation of consensual same-sex conduct.
3. An aggravated category should attach to sexual offences committed by a person in a position of custodial or institutional authority over the victim — including police personnel, prison staff, and staff of welfare or medical institutions — consistent with the D.K. Basu line of authority and reflecting the compounded breach of trust involved in custodial sexual violence.
4. The Ministry of Home Affairs should place the Parliamentary Standing Committee's November 2023 recommendation, and the pending disposition of *Gantavya Gulati v. Union of India*, on a defined implementation timeline, whether through ordinance, as suggested by the Delhi High Court, or through the ordinary amendment process.

Table 2. Legislative and Judicial Timeline

Date	Event
1861	Section 377 enacted under the Indian Penal Code
2009	Naz Foundation v. NCT of Delhi reads down Section 377 for consensual adult conduct
2013	Suresh Kumar Koushal v. Naz Foundation reverses Naz Foundation
2018	Navtej Singh Johar v. Union of India decriminalises consensual conduct; preserves Section 377 for non-consensual acts, minors, and bestiality
Nov 2023	Parliamentary Standing Committee recommends retaining Section 377 for non-consensual offences
Dec 2023	BNS passed without the recommended provision; concern raised by MP Asaduddin Owaisi
Jul 2024	BNS comes into force; Section 377 repealed in its entirety
Aug 2024	PIL filed in Gantavya Gulati v. Union of India
Jun 2026	Kurukshetra incident; FIR registered under BNS Section 114 only
2026 (pending)	Delhi High Court hearing on Gantavya Gulati continues

CONCLUSION

The Kurukshetra incident of June 2026 is the empirical occasion for this article, but its central claim is doctrinal: Indian criminal law, as it presently stands under the Bharatiya Nyaya Sanhita, 2023, provides no offence proportionate to non-consensual penetrative sexual assault where the victim is an adult male. This is not an inference drawn from a single case. It is confirmed by the plain text of Chapter V of the BNS, by the investigating officer's own acknowledgment in the Kurukshetra matter, and by the Parliamentary Standing Committee's explicit — and unaccepted — recommendation that the erstwhile Section 377 be retained in some form for non-consensual offences.

This article has sought to establish three propositions. First, the omission was a deliberate legislative choice rather than an oversight, made despite documented warnings from a Parliamentary Standing Committee, a Member of Parliament, and litigants before the Delhi High Court. Second, the resulting asymmetry — under which the same non-consensual act attracts a maximum sentence of life imprisonment where the victim is a woman and one year's imprisonment where the victim is an adult man — raises substantial questions under Articles 14, 15, and 21, particularly given the absence of an intelligible differentia connecting the classification to the object of protecting bodily autonomy. Third, comparative experience from the United Kingdom, South Africa, Canada, and Nepal indicates that gender-neutral sexual offence frameworks are workable and consistent with continued, undiminished protection for female victims, suggesting that the binary sometimes presented in domestic debate — between protecting women and recognising male victims — is not required by comparative drafting practice. This article's principal limitation, consistent with its doctrinal method, is that it does not draw on primary

empirical data regarding the incidence or under-reporting of male sexual assault in India. The existing literature suggests that stigma-driven under-reporting makes such data difficult to generate in the first instance (Tiwari, 2025), and that gap is itself a subject meriting dedicated empirical research beyond the scope of this analysis.

The reform path outlined in Part IX — a narrowly drawn, consent-based, gender-neutral penetrative offence, situated outside the language of the repealed Section 377, together with an aggravated custodial-violence provision — reflects a legislative response that the Parliamentary Standing Committee itself described as "mandatory." The pending disposal of *Gantavya Gulati v. Union of India* before the Delhi High Court offers one institutional avenue through which the gap may be addressed, whether by judicial direction, ordinance, or the anticipated BNS Amendment Bill. Until it is addressed through one of these routes, the statute book will continue to treat non-consensual sexual violence against adult men as indistinguishable, in law, from a minor act of hurt.

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Conflict Of Interest

The author declares no conflict of interest.

Ethical Considerations

This article is a doctrinal and analytical study based on publicly available legal materials, judicial decisions, legislative records, published news reports, and peer-reviewed academic literature. It does not involve human subjects research, data collection from individuals, or any experimental methodology requiring ethics committee approval. All information pertaining to the Kurukshetra incident is drawn exclusively from published news reports and official statements in the public domain. No informed consent was required.

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