



PRIVATE DEFENCE AND SEXUAL OFFENCES: DECONSTRUCTING GENDER, LUST AND LEGISLATIVE GAPS IN THE IPC AND BNS

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ABSTRACT

The right of private defence constitutes a fundamental protective mechanism within Indian criminal jurisprudence, permitting individuals to employ reasonable force against unlawful aggression when state intervention remains unavailable. This research paper critically examines the intersection between private defence provisions and sexual offences under both the Indian Penal Code, 1860 (IPC) and the Bharatiya Nyaya Sanhita, 2023 (BNS), with particular emphasis on the problematic terminology of “gratifying unnatural lust” and persistent gender biases embedded within legislative frameworks. Through doctrinal analysis, comparative examination, and judicial interpretation review, this study reveals significant legislative gaps that perpetuate gender stereotypes, exclude vulnerable communities, and fail to adequately protect victims of sexual violence. The paper analyzes landmark Supreme Court and High Court judgments including *Darshan Singh v. State of Punjab* and recent Madras High Court decisions on private defence in sexual assault cases. Theoretical frameworks encompassing autonomy theory, culpability theory, and feminist legal theory are employed to deconstruct the patriarchal underpinnings of current provisions. The research demonstrates that while Section 100 IPC (now Section 38 BNS) permits lethal force against assaults intended for “rape” or “gratifying unnatural lust,” the gendered nature of rape laws and undefined terminology create substantive inequalities. The study advocates for comprehensive legislative reform incorporating gender-neutral language, explicit definitions, recognition of diverse sexual identities, and expanded protections reflecting contemporary understandings of sexual autonomy and bodily integrity.

KEYWORDS: Private Defence, Sexual Offences, Gender Neutrality, Unnatural Lust, Legislative Gaps

I. INTRODUCTION

“The doctrine of private defence represents one of the oldest and most universally recognized legal principles, emanating from the fundamental human instinct of self-preservation and the Latin maxim “*necessitas non habet legem*” — necessity knows no law. In the Indian context, this right acknowledges the practical reality that the State cannot provide immediate protection to every citizen at every moment, thereby recognizing an individual’s entitlement to defend their body and property against imminent unlawful aggression. The philosophical justification for private defence rests on the principle that when faced with immediate danger, individuals should not be rendered helpless victims, compelled to suffer bodily injury or violation without recourse to self-protection.¹

Within the broader framework of private defence, provisions specifically addressing sexual offences occupy a particularly sensitive yet inadequately examined territory. Section 100 of the Indian Penal Code, 1860 (now Section 38 of the Bharatiya Nyaya Sanhita, 2023) extends the right of private defence to causing death when faced with “an assault with the intention of committing rape” or “an assault with the intention of gratifying unnatural lust”. While appearing progressive in recognizing the severity of sexual violence, these provisions reveal deep-seated legislative gaps, gendered assumptions, and discriminatory language that fail to adequately protect all victims of sexual assault.²

The problematic phrase “gratifying unnatural lust” represents

colonial-era morality codified into law, perpetuating heteronormative assumptions and stigmatizing non-heterosexual conduct. Despite the Supreme Court’s landmark 2018 judgment in *Navej Singh Johar v. Union of India* decriminalizing consensual homosexual conduct, the terminology persists in private defence provisions, creating conceptual confusion and discriminatory application. Furthermore, the strictly gendered construction of rape laws—defining rape exclusively as an offence committed by a man against a woman—excludes male, transgender, and non-binary victims from legal protection, violating fundamental principles of equality and non-discrimination enshrined in Articles 14 and 15 of the Constitution.³

This research paper undertakes a comprehensive examination of private defence provisions relating to sexual offences, analyzing their historical evolution, comparative frameworks, judicial interpretation, theoretical foundations, and inherent legislative gaps. Through rigorous doctrinal analysis supported by case law review and feminist legal scholarship, this study argues for urgent legislative reform to eliminate gender biases, adopt inclusive language, and ensure comprehensive protection for all individuals irrespective of gender identity or sexual orientation.⁴

II. LEGISLATIVE FRAMEWORK: PRIVATE DEFENCE PROVISIONS IN IPC AND BNS

A. Historical Evolution and Statutory Framework

“The right of private defence in India finds its origins in the

colonial-era Indian Penal Code drafted by Lord Macaulay in 1860, which incorporated English common law principles of self-defence. Sections 96 to 106 of the IPC (now Sections 34 to 44 of the BNS) comprehensively codify this right, establishing both its scope and limitations. Section 96 IPC (Section 34 BNS) provides the foundational principle: “Nothing is an offence which is done in the exercise of the right of private defence”. This statutory exemption from criminal liability recognizes that defensive actions, when justified by necessity and proportionality, do not constitute criminal offences despite potentially causing harm or death to the aggressor.⁵

Section 97 IPC (Section 35 BNS) extends this right to defending one’s own body and property, as well as that of any other person, against offences affecting the human body. Crucially, Section 99 IPC (Section 37 BNS) imposes restrictions on the exercise of private defence, stipulating that it cannot be exercised against lawful acts of public servants, must not exceed the necessity of the situation, and cannot be invoked as justification for causing more harm than necessary for the purpose of defence.⁶

B. Private Defence Extending to Causing Death in Sexual Assault Cases

“Section 100 IPC (Section 38 BNS) delineates specific circumstances where the right of private defence extends to voluntarily causing death or grievous harm to the assailant. Among the seven enumerated situations, clauses (c) and (d) specifically address sexual violence:

Clause (c): “An assault with the intention of committing rape”
 Clause (d): “An assault with the intention of gratifying unnatural lust”

These provisions recognize sexual assault as sufficiently grave to justify lethal defensive force, reflecting legislative acknowledgment of rape as not merely a crime of passion but an expression of power, dominance, and violation of bodily autonomy. The theoretical justification rests on the understanding that sexual violence inflicts profound psychological trauma extending far beyond physical injury, causing lasting damage to victims’ mental health, dignity, and sense of security.⁷

The inclusion of “unnatural lust” alongside rape was historically intended to address non-vaginal forms of sexual assault, particularly in the context of Section 377 IPC which criminalized “carnal intercourse against the order of nature”. However, this terminology has proven deeply problematic, embodying Victorian-era moral judgments that stigmatize homosexuality and perpetuate discrimination against LGBTQIA+ communities.⁸

C. Transition from IPC to BNS: Missed Opportunities for Reform

The Bharatiya Nyaya Sanhita, 2023, which replaced the IPC with effect from July 1, 2024, was presented as an opportunity to modernize and “Indianize” criminal law, removing colonial-era provisions and language. However, examination of private defence provisions reveals substantial continuity rather than transformative reform.⁹

Section 38 BNS largely replicates Section 100 IPC, retaining identical language including the phrase “gratifying unnatural lust”. This represents a significant missed opportunity, particularly given that Section 377 IPC—which originally defined “unnatural offences”—was deliberately excluded from the BNS following the Supreme Court’s 2018 decriminalization of consensual homosexual conduct. The retention of “unnatural lust” terminology in Section 38 BNS without corresponding definitions creates a legislative vacuum, leaving courts without clear guidance on interpretation and application.¹⁰

“Moreover, the BNS perpetuates gender-specific definitions of rape, with Section 63 BNS (replacing Section 375 IPC) continuing to define rape exclusively as an offence committed by a man against a woman. This gendered framework fundamentally shapes the application of private defence provisions, as discussed subsequently in this paper.¹¹

III. COMPARATIVE ANALYSIS: INTERNATIONAL PERSPECTIVES ON SELF-DEFENCE AND SEXUAL ASSAULT

A. United Kingdom: Sexual Offences Act 2003 and Self-Defence Framework

“The United Kingdom underwent comprehensive reform of sexual offences law through the Sexual Offences Act 2003, replacing antiquated provisions with gender-neutral language and expanded definitions of sexual assault. The Act defines rape to include penetration of the vagina, anus, or mouth with a penis without consent, applying to both male and female victims. Critically, the definition focuses on lack of consent rather than gender-specific victimization, representing a paradigm shift toward recognizing sexual autonomy as a universal right.¹²

Regarding self-defence, English common law permits the use of reasonable force to protect oneself or others from imminent harm, with the assessment of reasonableness determined by juries based on the circumstances as the defendant honestly believed them to be. In *R v. Clugstone*, a woman who killed a man attempting to rape her was acquitted after the trial judge directed the jury that there was no evidence to contradict her assertion of acting in self-defence. This case illustrates the UK judiciary’s recognition that lethal force may be proportionate when defending against sexual assault, although the lack of statutory specification leaves the issue to jury discretion, potentially creating inconsistency in treatment.¹³

B. United States: State-Level Variations and Constitutional Considerations

The United States presents a fragmented approach to both self-defence and sexual assault laws, with significant variation across states. Many jurisdictions have adopted gender-neutral rape statutes, replacing the traditional common law definition with broader “sexual assault” provisions that recognize male, female, and transgender victims. California’s Penal Code, for instance, defines sexual assault to include any non-consensual sexual penetration, regardless of the victim’s or perpetrator’s gender.¹⁴

Self-defence law in the US generally follows either the “duty

to retreat” or “stand your ground” doctrine, with significant implications for defensive actions against sexual assault. Several states explicitly recognize that individuals have no duty to retreat when faced with imminent threat of rape or sexual assault, permitting the use of deadly force in such circumstances. However, the expansive interpretation of self-defence rights has drawn criticism from feminist scholars who argue that it fails to account for gendered dynamics of violence, particularly in cases involving battered women who kill abusive partners.¹⁵

The recognition of Battered Woman Syndrome (BWS) in US courts represents an important evolution, acknowledging the psychological impact of prolonged domestic violence and expanding the temporal scope of self-defence to include non-confrontational killings. Indian jurisprudence has only recently begun engaging with BWS, as discussed in Section V of this paper.¹⁶

C. Australia: Progressive Reforms and Ongoing Challenges

“Australian states have progressively reformed sexual offences laws, with Victoria’s Crimes Act 1958 and New South Wales’ Crimes Act 1900 adopting gender-neutral definitions of sexual assault. The definition focuses on non-consensual sexual penetration, recognizing diverse forms of assault beyond traditional rape categories.¹⁷

Self-defence provisions in Australian criminal law permit reasonable force to protect oneself or others from unlawful attack, with specific recognition that killing may be justified when defending against sexual assault. Cases such as *R v. Kontinnen* have examined the application of self-defence in situations where women killed abusive partners, with courts increasingly considering psychological evidence regarding the effects of prolonged violence.¹⁸

D. Comparative Insights and Lessons for India

International comparison reveals several critical insights applicable to Indian reform efforts. First, the trend toward gender-neutral language in sexual offences provisions eliminates discriminatory assumptions and ensures comprehensive protection for all victims. Second, explicit recognition of diverse forms of sexual assault—including oral, anal, and object penetration—provides clearer legal frameworks than vague terminology like “unnatural lust”. Third, the acknowledgment of psychological factors, including Battered Woman Syndrome, expands the understanding of self-defence beyond immediate confrontational scenarios.¹⁹

India’s retention of gender-specific rape definitions and problematic colonial-era terminology stands in stark contrast to these progressive international developments, highlighting the urgent need for comprehensive legislative reform.²⁰

IV. SUPREME COURT AND HIGH COURT ANALYSIS: JUDICIAL INTERPRETATION OF PRIVATE DEFENCE IN SEXUAL ASSAULT CASES

A. Supreme Court Jurisprudence: Establishing Core Principles

The Supreme Court of India has developed substantial

jurisprudence on the right of private defence, establishing fundamental principles that govern its application. The landmark case of *Darshan Singh v. State of Punjab* (2010) articulated eleven key principles regarding private defence that have become foundational to judicial analysis:

1. Self-preservation is a basic human instinct recognized across civilized legal systems²¹
2. Private defence applies only when danger is suddenly confronted, not when self-created²²
3. A reasonable apprehension of danger suffices; actual commission of offence need not occur²³
4. The right commences when reasonable apprehension arises and continues as long as such apprehension persists²⁴
5. A person under attack cannot be expected to modulate defence with mathematical precision²⁵
6. Force used must not be wholly disproportionate to the threat faced²⁶
7. Courts can consider self-defence even if not specifically pleaded by the accused²⁷
8. The accused need not prove private defence beyond reasonable doubt²⁸
9. Private defence is available only against unlawful acts constituting offences²⁹
10. Persons facing imminent danger of death or serious injury may cause harm extending to death of the assailant³⁰
11. The matter must be judged from the subjective viewpoint of the accused in the surrounding excitement and confusion³¹

These principles were applied in the recent case of *Rakesh Dutt Sharma v. State* (2025), where the Supreme Court acquitted a medical practitioner convicted of culpable homicide after he shot an armed assailant who had attacked him with a pistol. The Court emphasized that “the right of private defence cannot be brushed aside and cannot be weighed in a golden scale,” recognizing that individuals facing deadly assault cannot be expected to exercise rational faculties with mathematical precision³²

B. Application to Sexual Assault: Recognizing Unique Vulnerabilities

“While the Supreme Court has not extensively addressed private defence specifically in sexual assault contexts, its general jurisprudence on private defence establishes that killing to prevent rape falls squarely within the ambit of Section 100 IPC. The Court has acknowledged that rape represents not merely a crime of sexual desire but an expression of power and domination, causing profound psychological trauma extending far beyond physical injury.³³

However, the Supreme Court’s treatment of consent and sexual violence in other contexts reveals concerning gender biases. The controversial *Tukaram v. State of Maharashtra* (1979) (Mathura rape case) exemplifies judicial insensitivity, where the Court acquitted policemen accused of raping a minor tribal girl, holding that absence of physical injury indicated consent. The judgment stated that because Mathura “raised no alarm” and bore “no visible marks of injury,” no rape occurred. This deeply flawed reasoning sparked nationwide protests and eventually

led to the Criminal Law Amendment Act, 1983, which shifted the burden of proof in custodial rape cases.³⁴

C. High Court Precedents: Progressive Applications of Private Defence

Recent High Court judgments demonstrate more progressive applications of private defence principles in sexual assault cases, recognizing the unique vulnerabilities faced by women and the proportionality of lethal force in preventing rape.³⁵

1. Madras High Court (2012): Quashing Murder Charge Against Minor Girl

In a landmark decision, Justice S. Nagamuthu of the Madras High Court quashed criminal proceedings against a 19-year-old girl who killed her father to prevent him from sexually assaulting her. The girl's father, in an intoxicated state, approached her at night with a knife, making sexual overtures and threatening her. When her pleas went unheard, she stabbed him in self-defence.³⁶

Justice Nagamuthu held: "When the girl, like the petitioner was put in such a situation, she would have been by all means, prompted only to save her modesty by using any weapon which immediately came to her hands. That is what the petitioner has done in this case. She has exactly performed what Mahatma Gandhi said about self-protection of women about 80 years ago". The Court emphasized that the case clearly fell within Section 100 IPC, and that nothing done in exercise of the right of private defence constitutes an offence under Section 96 IPC.³⁷

2. Madras High Court (2024): Mother Killing Husband to Protect Daughter

In another significant decision, Justice G. Jayachandran quashed a murder case against a mother who killed her husband after he, in a drunken state, attempted to rape their 21-year-old daughter. The investigation revealed that the mother heard noises and found her intoxicated husband lying on top of their daughter, choking her. When she tried to pull him off, he did not budge, prompting her to first use a wooden knife and subsequently a hammer to strike him, causing his death.³⁸

The Court observed: "Section 97 of the IPC grants the right to self-defence against offences affecting the body, including sexual offences covered under Sections 354, 375, 354-A, and 354-B. This means a person defending themselves or others from such crimes is exempt from punishment under Section 97, even if the offence is admitted". The judgment represents a crucial affirmation that lethal force is proportionate and legally justified when protecting against sexual assault, and that the right of private defence extends to protecting others, not merely oneself.³⁹

3. Tiruvallur Police Decision (2021): Altering FIR to Recognize Private Defence

In a remarkable administrative decision, the Tiruvallur police in Tamil Nadu sought acquittal of a 19-year-old girl who killed a man attempting to rape her, altering the FIR from Section 302 (murder) to Section 100 (private defence). The girl, living

with her maternal aunt, was confronted by the aunt's son while relieving herself in a secluded area. He wielded a knife and attempted rape, whereupon she snatched the knife and stabbed him in self-defence.⁴⁰

The police investigation concluded that: (1) the scene was sufficiently secluded that her cries would not be heard, (2) running in darkness would have been impossible, (3) the man's antecedents indicated he habitually carried a knife, and (4) the girl had no other motive to commit the act. Senior police officers referenced a 2012 precedent where former SP Asra Garg had invoked private defence provisions to seek acquittal of a woman who killed her husband attempting to rape their daughter.⁴¹

D. State of U.P. v. Ram Swarup (1974): Limits of Private Defence and Proportionality

"While not specifically involving sexual assault, State of U.P. v. Ram Swarup articulates critical principles regarding the limits of private defence, particularly the requirement of proportionality. The Supreme Court held that "the right of private defence is a right of defence, not of retribution. It is available in face of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage-manages a situation wherein the right can be used as a shield to justify an act of aggression".⁴²

The Court emphasized that harm inflicted must be proportionate to the threat faced, and that the right ceases once the danger passes. However, the Court recognized that "in such moments of excitement or disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to coolly weigh, as if in golden scales, and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression".⁴³

This recognition of the psychological realities facing individuals under attack is particularly crucial in sexual assault cases, where victims—predominantly women—face not only physical danger but profound psychological trauma and violation of bodily autonomy.⁴⁴

V. THEORETICAL FRAMEWORKS: UNDERSTANDING THE RATIONALE FOR PRIVATE DEFENCE

A. Autonomy Theory: Bodily Integrity and Sexual Sovereignty

The autonomy theory of self-defence posits that the fundamental justification for defensive action lies in the inherent right of individuals to bodily integrity and personal sovereignty. As Professor Fletcher explains, when a person's autonomy is compromised by unlawful intrusion, the defender has the right to expel the intruder and restore the integrity of their domain. This theory is particularly salient in sexual assault contexts, where the attack fundamentally violates the victim's bodily autonomy and sexual self-determination.⁴⁵

Feminist legal scholars have expanded autonomy theory to emphasize that sexual violence represents not merely physical

intrusion but a profound assault on personhood, dignity, and the right to make decisions about one's own body. The Indian Constitution's recognition of life and personal liberty under Article 21 has been judicially interpreted to encompass dignity, bodily autonomy, and freedom from sexual violence. This constitutional foundation supports robust private defence rights in sexual assault cases, as the right to defend one's bodily integrity constitutes an essential aspect of human dignity.⁴⁶

B. Culpability Theory: Aggressor Responsibility and Forfeiture of Rights

Culpability theory focuses on the aggressor's wrongful conduct as the basis for justifying defensive harm. Under this framework, an individual who initiates unlawful aggression bears moral and legal responsibility for the consequences, including harm inflicted in self-defence. The aggressor, through their own culpable conduct, forfeits certain rights and cannot legitimately complain when defensive force is used against them.⁴⁷

In sexual assault contexts, the culpability of the aggressor is particularly clear. Rape and sexual assault represent grave violations of criminal law, universally recognized as heinous offences causing profound harm. Section 100 IPC's authorization of lethal force against assaults intended to commit rape reflects legislative recognition of the aggressor's extreme culpability and the proportionality of defensive killing in such circumstances.⁴⁸

C. Utilitarian Balancing: Weighing Competing Interests

Utilitarian approaches to self-defence engage in consequentialist balancing, weighing the interests of the defender against those of the aggressor. Professor Sango argues for a pluralistic theory incorporating multiple factors: the autonomy of the attacked person, the culpability of the aggressor, and protection of the socio-legal order. By balancing these considerations within a utilitarian framework, the law can determine when defensive action is justified.⁴⁹

"Applied to sexual assault, utilitarian analysis strongly favors defensive action. The harm prevented—profound psychological trauma, violation of bodily integrity, potential physical injury, and destruction of sexual autonomy—vastly outweighs the harm inflicted on a culpable aggressor. Moreover, authorizing defensive killing in rape cases serves broader societal interests by deterring sexual violence and affirming the fundamental inviolability of sexual autonomy."⁵⁰

D. Feminist Legal Theory: Deconstructing Patriarchal Assumptions

Feminist legal theory provides critical analytical tools for examining how ostensibly neutral legal doctrines perpetuate gender inequality and patriarchal power structures. Feminist scholars argue that traditional rape laws and self-defence doctrines embody masculine perspectives, failing to account for gendered dynamics of violence, women's experiences of victimization, and structural power imbalances.⁵¹

The narrow temporal scope of traditional self-defence—requiring imminent threat and immediate response—fails to

accommodate the experiences of battered women who kill abusive partners after years of psychological and physical abuse. As discussed in Section V(E), recognition of Battered Woman Syndrome represents an important, albeit limited, attempt to incorporate women's perspectives into self-defence jurisprudence.⁵²

Feminist critique also extends to the gendered construction of rape laws, which define victims as exclusively female and perpetrators as exclusively male. This binary framework erases male and transgender victims, reinforces harmful gender stereotypes, and perpetuates the notion that women are inherently passive victims lacking agency.⁵³

E. Battered Woman Syndrome: Expanding the Temporal Scope of Self-Defence

Battered Woman Syndrome (BWS), developed by Dr. Lenore Walker, describes the psychological state of women subjected to prolonged domestic violence, characterized by cycles of abuse and learned helplessness. BWS has been increasingly recognized in common law jurisdictions as relevant to self-defence claims, particularly in cases where women kill abusive partners during non-confrontational moments.⁵⁴

Indian courts have only recently begun engaging with BWS, with three reported cases acknowledging its relevance. However, Indian jurisprudence has not yet formally incorporated BWS as a standalone defence, instead considering it as explanatory evidence relevant to existing defences such as private defence and provocation.⁵⁵

Scholars argue that BWS should be explicitly recognized in Indian law through statutory amendment, either as a new justificatory defence or as an expansion of existing exceptions under Section 100 IPC (Section 38 BNS). The current requirement of imminent threat fails to accommodate the realities faced by battered women, who may kill abusers during apparent lulls in violence when the psychological toll of prolonged abuse creates reasonable apprehension of future deadly harm.⁵⁶

The second ingredient of private defence—proportionality—also fails battered women, as it examines responses based on immediate physical threat rather than cumulative psychological impact. Recognition of BWS would expand judicial understanding of reasonableness and necessity, accounting for the unique circumstances of women trapped in cycles of violence.⁵⁷

VI. GENDER, LUST AND LEGISLATIVE GAPS: DECONSTRUCTING DISCRIMINATORY FRAMEWORKS

A. The Problem of "Unnatural Lust": Colonial Morality and Contemporary Discrimination

"The phrase 'gratifying unnatural lust' in Section 100 IPC (Section 38 BNS) represents one of the most problematic vestiges of colonial-era morality in Indian criminal law. Originally linked to Section 377 IPC, which criminalized 'carnal intercourse against the order of nature,' the terminology

embodies Victorian-era sexual morality that pathologized non-procreative and non-heterosexual conduct.⁵⁸

The Supreme Court's 2018 judgment in *Navtej Singh Johar v. Union of India* decriminalized consensual homosexual conduct, recognizing that Section 377's criminalization of same-sex relations violated fundamental rights to dignity, equality, and privacy. The Court held that "discrimination on the ground of sexual orientation and gender identity impairs equality before law and equal protection of law and violates Article 14 of the Constitution".⁵⁹

However, the complete exclusion of Section 377 from the BNS, while eliminating criminalization of consensual homosexual conduct, has created a significant legislative gap: adult men and LGBTQIA+ individuals now lack explicit protection from non-consensual sexual assault. Section 63 BNS defines rape exclusively as an offence committed by a man against a woman, leaving male and transgender victims without recourse.⁶⁰

The retention of "unnatural lust" in Section 38 BNS without corresponding definition exacerbates this problem. Courts must now interpret this undefined phrase in the absence of Section 377, creating uncertainty regarding its scope and application. Does "unnatural lust" encompass all non-heterosexual conduct, or only non-consensual acts? If the latter, how does it differ from rape? These ambiguities undermine legal clarity and potentially perpetuate discriminatory application.⁶¹

B. Gender-Specific Rape Laws: Excluding Male and Transgender Victims

India's rape laws remain stubbornly gender-specific despite decades of scholarly critique and Law Commission recommendations. Section 375 IPC (Section 63 BNS) defines rape as an offence committed by a man against a woman, explicitly excluding male and transgender victims from legal protection. This gender-specific construction violates fundamental constitutional principles of equality and non-discrimination enshrined in Articles 14 and 15.⁶²

The 172nd Law Commission Report (2000) recommended comprehensive reform to make rape laws gender-neutral, recognizing that "sexual assault is not only an act of lust and desire but also a manner of showing dominance or superiority of one caste, class, religion, community over the other and are acts of power and humiliation". The Report noted the increasing incidence of sexual assault against boys and recommended widening the definition to include circumstances where both men and women could be perpetrators and victims.⁶³

The Justice Verma Committee (2013), constituted following the 2012 Delhi gang rape, similarly recommended gender-neutral sexual assault provisions, emphasizing that rape represents an expression of power rather than passion. However, these recommendations were not fully implemented, with the Criminal Law (Amendment) Act, 2013 retaining gender-specific definitions.⁶⁴

The persistence of gender-specific rape laws reflects deeply

embedded patriarchal assumptions: that women are inherently passive victims, that men cannot be sexually violated, and that sexual assault conforms to rigid gender binaries. These assumptions erase the experiences of male victims, transgender individuals, and non-binary persons, denying them legal recognition and protection.⁶⁵

C. Intersectionality and Marginalized Communities

An intersectional analysis reveals that legislative gaps in private defence and sexual offences provisions disproportionately impact marginalized communities, including Dalits, tribal populations, and LGBTQIA+ individuals. The Mathura rape case exemplifies how caste and gender intersect to deny justice, with a young tribal girl's testimony dismissed and her character impugned by courts that assumed consent based on her social status.⁶⁶

Transgender individuals face particularly acute vulnerabilities, experiencing high rates of sexual violence while lacking legal protection. The absence of Section 377 from the BNS, combined with gender-specific rape definitions, leaves transgender victims without recourse for sexual assault. While the BNS recognizes "transgender" as a distinct gender category, Section 63 excludes transgender victims from rape provisions, creating a discriminatory hierarchy of protection.⁶⁷

D. Consent and Judicial Interpretation: Perpetuating Rape Myths

Beyond statutory language, judicial interpretation of consent in rape cases reveals persistent gender biases and reliance on rape myths. The Delhi High Court's judgment in *Mahmood Farooqui v. State* (2017) exemplifies problematic reasoning, with the court stating that "a feeble 'no' may mean a 'yes'" and suggesting different standards of consent apply depending on the parties' relationship and education level.⁶⁸

Such reasoning directly contradicts the 2013 amendments that explicitly defined consent as "unequivocal, voluntary, verbal or non-verbal communication indicating willingness to participate in a specific sexual act". The Explanation to Section 375 IPC (Section 63 BNS) makes clear that absence of physical resistance does not constitute consent. Yet judicial reliance on stereotypes regarding how "ideal" rape victims should behave continues to undermine these statutory protections.⁶⁹

Feminist scholars argue that consent must be affirmative, ongoing, and freely given, with the burden clearly on the accused to establish that such consent existed. The presumption should favor victims' testimony regarding absence of consent, rather than requiring victims to prove active resistance or immediate reporting.⁷⁰

E. Proportionality and Gender: Does the Standard Disadvantage Women?

The proportionality requirement in private defence—that force used must not be disproportionate to the threat faced—may systematically disadvantage women defending against male aggressors. Given typical disparities in physical strength between men and women, women may require weapons or

more forceful measures to effectively repel male attackers.⁷¹

The Madras High Court judgments discussed in Section IV recognize this reality, acknowledging that women facing sexual assault by physically stronger male aggressors may justifiably employ lethal force even when the aggressor is unarmed. However, the absence of explicit legislative recognition of gendered power dynamics leaves such determinations to case-by-case judicial discretion, creating potential inconsistencies.⁷²

Recognition of Battered Woman Syndrome addresses this issue by acknowledging that proportionality assessments must account for cumulative psychological impact and power imbalances inherent in abusive relationships. Similar reasoning should apply in acute sexual assault scenarios, where women's reasonable fear of death or grievous hurt justifies defensive measures that might appear disproportionate in abstract analysis.⁷³

VII. CONCLUSION AND RECOMMENDATIONS

This comprehensive analysis reveals profound legislative gaps, gender biases, and discriminatory frameworks embedded within private defence provisions relating to sexual offences in both the IPC and BNS. The persistence of colonial-era terminology like "gratifying unnatural lust," the rigidly gendered construction of rape laws, and the exclusion of male, transgender, and non-binary victims from legal protection represent systemic failures that violate fundamental constitutional principles of equality, dignity, and bodily autonomy.⁷⁴

While judicial interpretation has occasionally provided progressive application of private defence principles in sexual assault cases—particularly recent Madras High Court judgments affirming women's right to use lethal force in self-defence—comprehensive legislative reform remains urgently necessary. Piecemeal judicial correction cannot substitute for systematic statutory revision that eliminates discriminatory language, adopts inclusive definitions, and ensures comprehensive protection for all individuals irrespective of gender identity or sexual orientation.⁷⁵

VIII. RECOMMENDATIONS

1. Adopt Gender-Neutral Sexual Assault Provisions: Replace gender-specific rape definitions with comprehensive "sexual assault" provisions recognizing that persons of any gender can be both perpetrators and victims.⁷⁶
2. Eliminate "Unnatural Lust" Terminology: Remove colonial-era phrases like "gratifying unnatural lust" from Section 38 BNS, replacing them with explicit, non-discriminatory language such as "sexual assault" or "non-consensual sexual conduct".⁷⁷
3. Explicitly Protect LGBTQIA+ Individuals: Ensure legislative provisions explicitly recognize and protect transgender, non-binary, and LGBTQIA+ individuals from sexual violence.⁷⁸
4. Recognize Battered Woman Syndrome: Formally incorporate BWS into statutory defences, either through amendment of Section 38 BNS or creation of a new exception specifically addressing the circumstances of

battered women who kill abusers.⁷⁹

5. Clarify Proportionality Standards: Provide legislative or judicial guidance on proportionality assessments in sexual assault cases, explicitly recognizing that lethal force may be proportionate when defending against rape.⁸⁰
6. Strengthen Consent Standards: Legislatively mandate affirmative consent models and eliminate judicial reliance on rape myths and victim-blaming stereotypes.⁸¹
7. Implement Comprehensive Training: Require mandatory training for judges, prosecutors, and police on gender-sensitive handling of sexual assault cases, eliminating reliance on stereotypes and ensuring victim-centered approaches.⁸²
8. Conduct Periodic Review: Establish mechanisms for periodic review of sexual offences and private defence provisions, ensuring they evolve to reflect contemporary understandings of gender, sexuality, and bodily autonomy.⁸³

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