

THE SIGNIFICANT LEGAL LACUNA IN THE IPC–BNS TRANSITION: A CRITICAL EXAMINATION OF NON CONSENSUAL UNNATURAL SEXUAL OFFENCES AND BESTIALITY FROM A GENDER JUSTICE PERSPECTIVE:

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1. INTRODUCTION: DECOLONISATION AND ITS DISCONTENTS

The most significant transformation of India's criminal justice system in the past 150 years is the Bharatiya Nyaya Sanhita (BNS), 2023. Considered to be an essential shift from the imperial past of the Indian Penal Code (IPC), 1860, the BNS came into effect with the explicit goal of valuing "justice" (Nyaya) over "punishment" (Dand), and guaranteeing the legal structure adheres to the current principles and constitutionality of India.¹ However, the lawmakers accidentally created a significant jurisprudential vacuum in its passionate attempt to reform the law books and eliminate sections considered to be old or burdened with Outdated morality.

This study does an in-depth legal analysis of the BNS's failure to include Section 377 of the IPC. Although Section 377 was renowned in the past for making same-sex relationships with consent illegal—a cruel Antiquated legacy that the Supreme Court rightly overturned in **Navtej Singh Johar v. Union of India (2018)** where the section

had two significant objectives. It served as the only legal place for the prosecution of transsexual people, male victims of unlawful sexual conduct (rape), and the terrible crime of bestiality.²

This article contends that a substantial legal vacuum has been created by the BNS deletion of Section 377 in the absence of a meaningful substitute. This gap raises major issues under Articles 14 and 21 of the Constitution since it negatively impacts transgender people, adult male victims of sexual assault, and animal welfare. In addition to offering constitutionally sound legislative solutions, the article investigates whether the present BNS structure is consistent with constitutional guarantees of equality, dignity, and gender justice.

2. HISTORICAL JURISPRUDENCE: THE USE AND EXTENT OF SECTION 377 IPC, 1860

Understanding the practical application of Section 377 of the IPC as it stood prior to its repeal is necessary in order to understand the scope of the current legal gap. The provision has developed

1 Bhartiya Nyaya Sanhita, 2023, No.45, Acts of Parliament, 2023 (Statement of Objects and Reasons)

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

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through legal interpretation to become the umbrella section for sexual activities that did not fit in the strict penile-vaginal definition of rape under Section 375 IPC, far from being merely a remnant of discrimination.

2.1 The Colonial Structure and the "Order of Nature"

The English Buggery Act of 1533 served as a foundation for Section 377, which was drafted by Lord Thomas B. Macaulay and passed in 1860. The text of the provision was deceptively straightforward but expensive wording.

*"Whoever intentionally 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."*³

The IPC never provided a statutory definition for the operative phrase, "against the order of nature." Rather, the judiciary was tasked with giving these terms context, which resulted in a century of case law that established the limits of lawful sexual behavior in India.

2.1.1 "Carnal Intercourse" as Interpreted by Judges

The courts regularly ruled that "carnal intercourse" didn't require discharge, but it did involve penetration, no matter how small. The biological potential for conception was the main factor that defined the extent of "unnatural".

Govindrajulu In re (1886), where the Madras High Court had previously adopted a more restrictive stance, speculating that oral sex might not be a crime. This was overturned by later decisions, such as *Khanu*, which established that it was illegal to engage in any kind of sexual enjoyment that involved inserting the penis into a non-procreative organ, such as the mouth or anus.⁴

Khanu v. Emperor (1925): The Sind High Court considerably enlarged the term of "unnatural" in this landmark case. The court determined whether oral

sex, or coitus per os, was illegal under Section 377. The mouth was not a sexual organ, according to the defense. But the court decided that the potential for conception is the "natural object" of sexual activity. Oral sex was considered "against the order of nature" because there is no chance of procreation. This ruling established the precedent that oral sex was covered under Section 377 for over a century.⁵

State v. Lohana Vasantlal Devchand (1968): The Gujarat High Court reaffirmed that the mouth's aperture is not intended for sexual activity "according to nature," supporting the illegality of oral sex despite consent.⁶

According to these opinions, Section 377 applied to three different types of acts:

1. **Anal sex, or sodomy**, can occur between men or between a man and a woman.
2. **Oral Sex**: Any combination of genders.
3. Sexual engagement with animals is known as **bestiality**.

2.2 The Navtej Singh Johar Watershed: A Decriminalization in Part

Section 377 has been contested numerous times on the grounds that it violates the fundamental framework of the constitution, leading to the landmark Constitution Bench ruling in *Navtej Singh Johar v. Union of India (2018)*⁷, which is sometimes misunderstood as the "repeal" of Section 377. In actuality, the Supreme Court used its judicial power to eliminate the unconstitutional parts of the legislation while keeping its protecting features. The Supreme Court ruled that Section 377 was unlawful only insofar as it made private, voluntary sexual activity between adults of the same sex illegal.⁸ The Court determined that making consenting intimacy illegal violated:

Article 14: By discriminating on the basis of gender identity.

Article 15: Discrimination based on "sex," which encompasses gender identity.

3 Indian Penal Code, 1860, Section 377, No. 45, Acts of Parliament, 1860

4 In re Govindrajulu Naicken (1886) 1 Weir 382

5 Khanu v. Emperor, A.I.R. 1925 Sind 286

6 Lohana Vasantlal Devchand v. State, A.I.R. 1968 Guj. 252

7 Supra Note 2

8 Navtej Singh Johar, (2018) 10 S.C.C. at 120

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Article 19: By limiting the freedom of personal identity and opinion.

Article 21: By infringing upon the fundamental rights to dignity and privacy.

Importantly, the Court specifically preserved Section 377 for the following categories: The ruling made it clear that the law would continue to be used to prosecute: Non-Consensual Conduct: Any unlawful oral sex or sodomy (male or female rape). Conduct with Minors: Section 377 continued to be an additional regulation even though the POCSO Act 2012 addresses this.

Bestiality: The Court stated that while animals are incapable of giving permission, having sex with them is still considered a "unnatural offence" that is illegal.⁹

As a result, in the post-2018 legal environment of Section 377 had changed from being an instrument of exploitation against the LGBTQ+ community to a gender-neutral rape protection for men and transgender people as well as a safeguard against animal mistreatment.

3. THE OMISSION OF SECTION 377 IN THE BHARATIYA NYAYA SANHITA

An attempt to "Indianize" the legislation was used to justify the switch from the IPC to the BNS. But rather than reforming the offense, the legislative process shows a serious disregard for the protective characteristics established by the Supreme Court, leading to its complete elimination.

3.1 Erasure of Text

There is no clause in the Bharatiya Nyaya Sanhita, 2023 titled as "Unnatural Offences." The entire word of Section 377 has been removed. The gap is demonstrated by a comparison of the regulations:

Feature	Indian Penal Code (IPC), 1860	Bharatiya Nyaya Sanhita (BNS), 2023	Impact of Change
Unnatural Offences	Section 377: Punished having sex with a man, woman, or animal in violation of the natural order.	None: The idea is completely absent from substantive crimes.	Non-consensual sodomy and bestiality are decriminalized.
Rape Definition	Section 375: Specific to gender (Man on Woman). confined to a woman's vaginal, oral, or anal penetration.	Section 63: Sustains gender-specificity (Man on Woman). The definition is the same as IPC 375.	The definition of "rape" continues to exclude male and transgender victims.
Consent in Sodomy	Post-Navtej Johar: Consensual = Lawful; Non-consensual = Unlawful (Life Sentence).	N/A: There is no longer a distinct sexual offense associated with non-consensual sodomy.	Victims are forced to resort on less severe "Hurt" or "Assault" claims. ¹⁰

3.2 Parliamentary Standing Committee Observations

Despite clear cautions from the assessing body, the absence was a deliberate legislative decision rather than an accident. Particular segments of the Parliamentary Standing Committee on Home Affairs (Report No.

⁹ Id. At 253

¹⁰ Bhartiya Nyaya Sanhita, 2023 Section 63; Indian Penal Code, 1860, Section 375, 377

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246)¹¹, which examined the BNS Bill, were devoted to this matter.

The Observation of the Committee: Regarding the Navtej Singh Johar ruling, the Committee took note of the Ministry of Home Affairs' reply. The Committee members contended that although consensual activities were legalized, "bestiality" and "non-consensual sexual acts of unnatural order" continued to be punished under Section 377 after 2018.

The Committee made a specific recommendation in paragraph 1.17 of its report: "The Committee thinks that it is necessary to bring back and keep section 377 of the IPC in order to coincide with the purposes indicated in the BNS's Statement of Objects and Reasons... As a result, the Committee advises the Government to incorporate IPC section 377 into the proposed legislation".¹²

The Dissent: The Ministry was specifically contacted by a number of members and stakeholders who pointed out that eliminating the provision would leave men and transgender people without any protection against sexual assault. The Committee emphasized that the elimination of the sole clause protecting male victims ran counter to the government's purported "gender-neutral" goal.

3.3 The Rejection of the Government

The final draft of the Bharatiya Nyaya Sanhita, which was approved by Parliament and signed into law by the President, disregarded the request to keep Section 377 regardless of these high-level recommendations. In the Statement of Objects and Reasons, the government gave no thorough justification for decriminalizing non-consensual activities against men as sexual crimes.

4. THE ABSENCE OF PROTECTIONS AGAINST MALE SEXUAL ASSAULT

11 Department Related Parliamentary Standing Committee on Home Affairs, Report No. 246 on The Bhartiya Nyaya Sanhita Bill, 2023 ¶ 1.15 (Nov. 2023).

12 Id. at ¶ 1.17

(MALE RAPE)

The legal abandoning of adult male victims of sexual violence is the most apparent and detrimental effect of the BNS. The BNS has rendered male rape lawful by keeping a gender-specific definition of rape while eliminating the gender-neutral "unnatural offences" clause.

4.1 The Rape Definition (Section 63 BNS)

Rape is defined in Section 63 of the BNS. The definition is clear:

*"A male is considered to have committed "rape" if he inserts his penis, in any way, into a woman's mouth, urethra, vagina, or anus..."*¹³

This idea holds that only women are victims. According to the BNS, an adult male cannot be considered a victim of "rape" if he is sodomized (anally penetrated) or coerced into having oral sex by another man or woman.

4.2 The Fallacy of "Grievous Hurt"

Prosecutors dealing with male sexual assault cases are compelled to fit these offenses within broad definitions of physical assault because there is no distinct sexual offense. The frequently mentioned substitutes are:

Section 115 BNS, "Voluntarily Causing Hurt," carries a maximum one-year imprisonment.

Section 117 BNS, "Voluntarily Causing Grievous Hurt," has a maximum seven-year imprisonment.

According to Section 127 BNS, wrongful confinement carries a maximum sentence of one year in jail (or longer, depending on the length of time).

- **Criticism of Adequacy:** There are a number of ethical and legal issues with this strategy.
- **Absence of Sexual Element:** "Grievous Hurt" penalties do not adequately convey the sexual aspect of the transgression. Rape is an infringement of bodily autonomy and dignity, not just a physical attack. Calling it "hurt" overlooks the seriousness of the crime, much like accusing a rapist of "assault" because he restrained the vic-

13 Bhartiya Nyaya Sanhita, 2023, Section 63, No. 45, Acts of parliament, 2023

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tim.¹⁴

- **Threshold of Injury:** "Grievous Hurt" necessitates certain physical consequences, such as disfigurement, hearing or vision loss, bone fractures, or extreme pain that prevents one from engaging in daily activities for 20 days. When coerced into submission, a victim of non-consensual sodomy may not experience "severe bodily pain for 20 days" or fractured bones. In these situations, the offense would be classified as basic "Hurt," with a negligible one-year penalty.
- **Inequality in Sentencing:** Life imprisonment was the penalty under IPC 377. The maximum sentence for Grievous Hurt under BNS is seven years. In terms of deterring sexual aggression against men, this is a significant decline. Rape of a man carries a shorter sentence than several crimes that involve property.

4.3 Implications of Case Studies

Take the case of **Suraj Revanna (2024)**, "where a guy is accused of sexual assault. Because the crime happened before July 1, 2024, the complaint was filed under IPC 377. The police would not have been able to use any sexual offense provision if the incident had happened on July 2, 2024. The case for prosecution and the victim's approach to justice would be severely weakened if the offender was accused of "unnatural lust" kidnapping (if applicable) or simple assault".¹⁵

Additionally, research show that there is already an enormous amount of humiliation associated with male rape victims. The toxic male belief that men cannot be raped is reinforced by the absence of a formal law, which validates this silence. This opacity is now officially supported by the legal system.

5. THE TRANSGENDER PROTECTION CRISIS

The transgender people caught in the middle of

this legislative breakdown. Despite the existence of the Transgender Persons (Protection of Rights) Act, 2019 (TPA), its criminal prohibitions fall far short of the safeguards provided to cisgender women under the BNS.

5.1 Is Token Protection Provided by the Transgender Persons (Protection of Rights) Act, 2019?

"Sexual abuse" of a transgender person is illegal under Section 18(d) of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as TPA) the law reads: *"Anyone who threatens the life, safety, health, or well-being of a transgender person or who engages in behaviors such as physical, sexual, verbal, or emotional abuse faces a minimum sentence of six months in prison, a maximum sentence of two years, and a fine."*¹⁶

5.2 The Victimhood Hierarchy

When the BNS and the TPA are compared, an almost absurd breach of Article 14 (Equality) is shown.

Scenario	Offence & Law	Punishment
Perpetrator A rapes a Cisgender Woman	Rape (S. 64 BNS)	Minimum 10 Years to Life Imprisonment ¹⁷
Perpetrator A rapes a Transgender Woman	Sexual Abuse (S. 18 TPA)	Maximum 2 Years Imprisonment ¹⁸

Analysis: The perpetrator's conduct is the same (non-consensual penetration). The trauma caused is same. However, compared to a cisgender woman, the state places a far lower emphasis on the transgender victim's bodily integrity.

14 Devika Sharma, New Criminal Laws Legalise Male Rape in India, International Bar Association (31 July, 2024)

15 Sukanya Shaji, Suraj Revanna Case Underlines Flaws in New Criminal Law: No Recourse for Men, LGBTQIA+ Persons, The News Minute (June 27, 2024)

16 Transgender Persons (Protection of Rights) Act, 2019, Section 18(d), No. 40, Acts of Parliament, 2019

17 Bhartiya Nyaya Sanhita, 2023, Section 64 clause 1

18 Transgender Persons (Protection of Rights) Act, 2019, Section 18(d)

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Pre-BNS Situation: In order to secure a life sentence, prosecutors could charge the rapist of a transgender person under Section 377 IPC.

Post-BNS Scenario: Since Section 377 is no longer in effect, prosecutors must either depend on the TPA's inadequate 2-year sentence or try to claim that the transsexual woman is a "woman" under BNS Section. 63. Section 18 TPA is the inevitably insufficient remedy because there is still legal uncertainty about whether pre-operative transgender women or individuals who identify as non-binary are classified as "women" under the BNS.

5.3 Constitutional Issues

This discrepancy has been contested in **Grace Banu v. Union of India**, which is presently pending before the courts. The petitioners contend that the two-year limit on sexual assault of transgender people is discriminatory and unfair. This is made worse by the exclusion of IPC 377, which eliminated the one possibility that permitted harsh punishment.¹⁹

6. THE "GHOST PROVISIONS": PROOF OF INCOHERENT LEGISLATION

A careful examination of the BNS shows that the lawmakers probably neglected to include the core violation while keeping procedural references to "unnatural lust" rather than entirely decriminalizing it. The legal conundrum created by these "ghost provisions" allows someone to be punished for organizing an act that is not illegal in itself.

6.1 Kidnapping for "Unnatural Lust" (Section 140(4) BNS)

Kidnapping and abduction are punishable under Section 140(4) of the BNS (equivalent to Section 367 IPC): *"Whoever kidnaps or abducts any person in order that such person may be subjected... to the unnatural lust of any person... shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*²⁰

19 Grace Banu v. Union of India, W.P. (C), No. 1033/2020 (SC) (pending)

20 Bhartiya Nyaya Sanhita, 2023, Section 140(4)

THE ABSURDITY OF LAW:

In this part, the BNS expressly acknowledges "unnatural lust" as a separate notion from "grievous hurt" or "slavery". Ten years in jail is the penalty for kidnapping someone for this reason. However, there is no significant part in the BNS to penalize sodomy itself once the kidnapping is finished and the "unnatural lust" (sodomy) is truly satisfied.

Conclusion: A perpetrator faces ten years in prison if they abduct a victim in order to sodomize them (S. 140). They are only charged with "hurt" (one year) or "grievous hurt" (seven years) if they sodomize the victim without abduction (for example, by inviting them home and then overpowering them). The punishment for the preparatory act is worse than that for the completed act.²¹

6.2 Section 38 BNS: Right to Private Defence

The situations in which the right of private defence extends to inflicting death are listed in Section 38 of the BNS (similar to Section 100 IPC). The following is included in clause (d): *"An assault with the intention of gratifying unnatural lust."*²²

The Paradox of Law: The law permits a victim to murder their attacker in order to stop "unnatural lust." This suggests that the state considers "unnatural lust" to be a horrible act deserving of deadly action in retaliation. However, the state declines to make the conduct itself a crime under the same legislation. This discrepancy implies that the BNS lawmakers adopted these ancillary provisions from the IPC without understanding they had removed the fundamental definition of "unnatural lust" (Section 377), which was essential to the interpretation of these provisions.

7. THE LEGALIZATION OF BESTIALITY: A CATASTROPHE FOR ANIMAL WELFARE

Animal welfare legislation has suffered greatly as a result of Section 377's removal, which was

21 Anupriya Dhonchak, The Ghost of Section 377: Unnatural Lust in the Bharatiya Nyaya Sanhita, 54 Econ. & Pol. Wkly. (2024)

22 Bhartiya Nyaya Sanhita, 2023, Section 38 (d)

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probably not intended. The only legal justification for classifying bestiality as a crime was the words "or animal" in IPC 377.

7.1 The Present Vacuum

Bestiality is no longer a crime under the Bharatiya Nyaya Sanhita since Section 377 IPC has been repealed. Both the Public Nuisance legislation and the Rape provisions (S. 63 BNS) make no mention of it.

7.2 The Insufficiency of the PCA Act, 1960

Law enforcement must adopt the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as PCA) in place of a penal code section. According to Section 11(1)(a), *anybody who "beats, kicks, overrides... tortures or otherwise abuses any animal so as to expose it to unneeded agony or suffering"* faces consequences. The Punishment of a fine of between Rs. 10 and Rs. 50 is the penalty for a first violation. A second offense, carries a fine of between Rs. 25 and Rs. 100 or up to three months in jail.²³

Effect: A person who rapes a dog faces life in jail under IPC 377. The same individual is subject to a Rs.50 fine under the BNS system (using the PCA Act). By doing this, bestiality is essentially decriminalized and reduced from a serious crime to a minor regulatory offense.

7.3 The Unfulfilled 2022 Amendment

This disparity is known to the government. A new Section 11A of the Draft Prevention of Cruelty to Animals (Amendment) Bill, 2022 defined "*Gruesome Cruelty,*" specifically mentioning "*bestiality.*"

The suggested punishment is either a fine of between Rs. 50,000 to Rs. 75,000 or 1 year to 3 years in jail.²⁴

Status: The bill has not been approved and is still in draft form.

Criticism: Lowering the maximum term from Life (IPC) to 3 years (PCA Amendment) indicates a legislative weakening of the seriousness of sexual assault against animals, even if

it is implemented.

8. JUDICIAL INTERVENTIONS:

A constitutional dispute over the separation of powers has resulted from the judiciary being made aware of these gaps.

8.1 PILs in the Delhi High Court (2024)

The Delhi High Court heard PILs contesting Section 377's removal in August 2024. "*If something happens outside this court, should we all turn a blind eye because it is no longer a penal offence in the statute books?*"²⁵ the Bench, chaired by Acting Chief Justice Manmohan, noted with serious concern. For such crimes, there cannot be a legal blank. The Court suggested the idea of an Ordinance to close the crack and instructed the Center to consider the petition as a representation and make an immediate decision.

8.2 The Rejection by the Supreme Court (October 2024)

But in October 2024, the Supreme Court heard a similar case, and the result was different. The PIL demanding a mandamus for the legislature to pass a fresh law was rejected by the Bench presided over by Chief Justice D.Y. Chandrachud.

Justification: The Court used the Separation of Powers theory. "*How can we force the legislature to make it an offense?*" The CJI declared that it falls entirely within the legislative purview of Legislature.²⁶

Implication: The Court believed that establishing a new criminal offense (penalty) was only a legislative task, in contrast to the Vishakha guidelines, where the Court filled a gap in sexual harassment statutes. As a result, the government has complete control over the situation, and there isn't yet a legal option to close the gap.

9. INTERNATIONAL FRAMEWORKS

23 Prevention of Cruelty to Animals Act, 1960, Section 11 (1)(a), No. 59, Acts of Parliament, 1960

24 Draft Prevention of Cruelty to Animals (Amendment) Bill, 2022, Section 11A

25 Gantavya Gulati v. Union of India, W.P. (C), No. 11370/2024 (Delhi High Court, August 28, 2024) (oral observations of Acting C.J. Manmohan)

26 Pooja Sharma v. Union of India, W.P. (C), No. 1198/2024 (SC), (October 14, 2024)

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FOR COMPARISON

When viewed alongside with other Commonwealth countries that have effectively updated their laws on sodomy without leaving victims vulnerable, India's setback is striking.

9.1 United Kingdom

The UK changed its rape laws at the same time as it removed its anti-sodomy laws, which were comparable to Section 377. According to Section 1 of the Sexual Offences Act of 2003, rape is defined as the deliberate, unconsented invasion of another person's mouth, anus, or vagina with a penis. As a result, male rape is punished as rape and carries the identical stigma and life sentence as female rape.²⁷

9.2 Singapore

In 2022, Singapore removed Section 377A, which made homosexual conduct by men illegal. Concurrent Improvement: To broaden the term of rape, the legislature changed the Penal Code.

New Definition: Non-consensual penile penetration of the mouth or anus is now considered rape. Men are specifically acknowledged as vulnerable rape victims.²⁸

9.3 Federal and State of the United States

The majority of US states and the federal code changed sexual misconduct legislation to be gender-neutral after **Lawrence v. Texas (2003)**²⁹, which decriminalized sodomy. To ensure that there was no protection gap, the "forcible sodomy" prohibitions were incorporated into general sexual assault/rape statutes.

Observation: India is an anomaly. It did not take the second required step of codifying non-consenting activities into the Rape statute, but it did follow the road of decriminalizing consensual acts (as in the US and the UK).

27 Sexual Offences Act 2003, c.42, Section 1 (UK)

28 Penal Code (Amendment) Act 2022 (Act 30 of 2022) (Singapore)

29 Lawrence v. Texas, 539 U.S. 558 (2003)

10. SUGGESTIONS AND CORRECTIVE MEASURES

The BNS's current legal system is unworkable and unconstitutional. In order to address the "specific legal deficit," the following legislative measures are suggested:

10.1 Main Suggestion: Amendment on Gender-Neutral Rape Definition

Modifying Section 63 of the BNS (Rape) is a highly reliable remedy.

The Text: "A man is said to commit "rape" if he -- penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person..."

Impact: By simply replacing "woman" with "person," male rape, sodomy, and oral rape would be immediately included, aligning the BNS with the UK Sexual Offences Act and the Justice Verma Committee Recommendations (2013).

10.2 Reintroducing a Particular Offense as an Alternative Suggestion

The legislation must create a new provision (such as Section 63A) labeled "Sexual Assault by Penetration" if it wants to preserve the particular gendered protection of women under "Rape."

Scope: Penile penetration of any individual (male, female, transgender) without consent. **Penalty:** Strict incarceration for a minimum of ten years and a maximum of life.

10.3 Bringing Back Bestiality Laws

The BNS has to be updated with a new provision that addresses "*Sexual Intercourse with Animals.*"

Placement: Under either Chapter V (Offenses against the Body) or Chapter XV (Offenses Affecting the Public Health/Decency).

Penalty: To ensure deterrent and remove it from the small "animal cruelty" paradigm, a minimum sentence of seven to ten years in jail is required.

10.4 Transgender Persons Act, 2019 Harmonization

In order to match the punishments with the BNS,

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the Transgender Persons Act has to be changed. "Sexual Harassment" (which has a reduced penalty) and "Aggravated Sexual Assault" (which carries a sentence equivalent with rape) should be separated under Section 18(d).

11.CONCLUSION

The Bharatiya Nyaya Sanhita's removal of Section 377 is a classic illustration of how, if "decolonization" is not carried out with forensic accuracy, well-meaning efforts may end in real injustice. The legislature has unintentionally destroyed a protective net for the most defenceless members

of society—men who are raped, transgender people demanding equal protection, and animals abused—in its hurried attempt to abolish an imperial moral code. Legislative confusion is demonstrated by "ghost provisions" such as Section 140(4), which punish the preparation for an offense that no longer exists. The responsibility is entirely on the legislature since the Supreme Court has declined to enact laws from the bench. As long as the BNS ignores the fact that there are male and transgender victims of sexual assault, it cannot be considered to be a contemporary code of "Justice" (Nyaya). It is a constitutional requirement for urgent legislative modification, not only a suggestion.