

Sexual Victimization and the Legal Response to Transgender Persons in India (BNS 2023, TPPR Act 2019, and POCSO 2012)

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Abstract:

Sexual violence against transgender persons in India remains a critical yet under-addressed issue, largely due to structural gaps in the legal framework and institutional biases. This paper critically examines how three key legislations—the Bharatiya Nyaya Sanhita (BNS) 2023, the Transgender Persons (Protection of Rights) Act (TPPR) 2019, and the Protection of Children from Sexual Offences (POCSO) Act 2012—interact to shape access to justice for transgender survivors of sexual victimization. The BNS, which replaced the Indian Penal Code, retains a largely binary and cisnormative understanding of sexual offences, particularly rape. As a result, transgender women often face reluctance in applying serious rape provisions, while trans men and non-binary persons are frequently downgraded to lesser offences. The TPPR Act provides an important rights-based framework by prohibiting discrimination and promoting dignity, but it lacks specific, enforceable mechanisms for crisis response, safe shelter, confidentiality, and accountability during sexual violence cases. In contrast, POCSO offers the most structurally inclusive approach for transgender minors through its gender-neutral, child-centred provisions. However, its effectiveness is heavily undermined by implementation failures such as misgendering, outing, unsafe shelter placements, and institutional stigma. Through a comparative analysis, the paper highlights that while these laws contain progressive elements on paper, the actual protection for transgender survivors depends more on the front-end stages of the justice system—FIR registration, medical examination, shelter placement, and initial investigation—where bias and procedural gaps are most pronounced. The study concludes that meaningful justice requires more than criminalization or general non-discrimination clauses. It calls for binding standard operating procedures, mandatory training, time-bound grievance redressal, identity-affirming protocols, and stronger accountability mechanisms across police, healthcare, and child protection institutions.

Keywords: Transgender survivors, sexual violence, BNS 2023, TPPR Act 2019, POCSO Act, access to justice, gender diversity, institutional bias

INTRODUCTION

The sexual violence laws in India are often gauged in the levels of severity of criminal punishment and consequences of conviction. But, considering transgenders, it is the more radical question whether or not the court system is reachable at all - safely, in a timely and harmless manner. The interaction between substantive criminal law and rights-related protections and child-protection processes is distinct in creating a stratified law when the experience of a survivor might be equally respected but, so to say, it is denied. The essay is dedicated to the analysis of this landscape in terms of the intensive comparison of three relevant documents, i.e. Bharatiya Nyaya Sanhita, 2023 (BNS), the Transgender Persons (Protection of Rights) Act, 2019 (TPPR Act) and the Protection of Children from Sexual Offences Act, 2012 (POCSO).

All of these frameworks address a varied area on sexual violence and survivorship protection. The BNS is the primary penal legislation, which conceptualizes the criminal acts and penalties; thus, it organizes the translation of sexual violence into criminal indictments, evidence production and trial discourses. The TPPR Act is on the other hand, not law that is the law of sexual offences, but a rights-based law that is supposed to achieve dignity, equality, and discrimination freedom in life commitments like healthcare, shelter, employment and police assistance that are directly related to whether or not transgender persons may seek to access them, or are excluded from them. POCSO takes up a unique niche because it builds a protective surrounding the figure of the child, a space that is largely gender-neutral, and which has been reported to be of particular importance to transgender and gender-diverse minors.

The assumption on which the paper is based is that transgender survivors encounter institutional and legal obstacles. Offence provisions can be abused even where they are found to create misgendering, outing, disbelief, coercive questioning, denial of services/places and unsafe placements of protegee among other possibilities of victim blaming. These barriers could be observed as the most obvious ones on the front end of the system: FIR registration, medical exam, crisis shelter and child welfare decision-making, and first-stage investigation. To this end, the three laws are not viewed in isolation but the analysis focuses on the operation of these laws in a practical pathway of reporting to protection to in the event that accountability can be achieved.

The overall objective consists of two parts: establishing how BNS, TPPR Act, POCSO, respectively, assist or hinder the rightful access to justice by transgender survivors; and formulate actionable recommendations on the same which would improve institutional responsiveness without necessarily requiring the redesigning of legislation. The paper compares (i) offence design and charging realities under BNS (ii) the gaps in the enforcement and the risk to service denial under the TPPR Act (iii) the protection of the process and protection challenges under POCSO, therefore, arguing that we should have more than the bare criminalization of some actions to enjoy any meaningful protection, when that protection lacks enforceable standards of dignity, confidentiality, and safety in the police, healthcare, and child protection institutions.

BHARATIYA NYAYA SANHITA, 2023 (BNS): SEXUAL OFFENCES FRAMEWORK AND ITS IMPLICATIONS FOR TRANSGENDER SURVIVORS

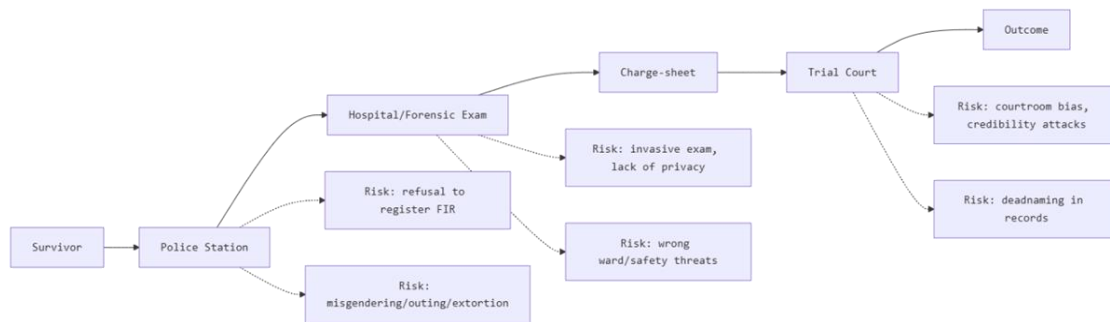
The BNS transformed the IPC, 1860. Although some of the provisions can be incorporated to the case of transgender survivors, the very structure assumes binary model of sex and gender, which creates certain gaps in recognition, charging, and enforcement. All that matters is that the issue of rape remains gender-specific and the group of the guarded victims is being presented in the way that is likely to put a cisgender woman in the focus. Unless her appearance or documents are cisnormatively, all the officials may not adhere to rape provisions even when the survivor is a trans woman. The scant rape provisions given to trans men and non-binary individuals are even further demoted to less serious criminal offences with less seriousness and legal acceptance: bail, the urgency of investigation, and trust in survivors. The trivialization of sexualized coercion that does not conform to restricted norms can also be due to the focus of the framework on penetrative scripts as well.

Practical Inclusion Under BNS Who Is Most Likely to Be Recognized

Survivor identity	Likelihood of being treated as “standard” victim under core sexual offences	Typical institutional barriers (not exhaustive)	Common charging drift (what may happen)
Cis woman	High	Routine gender bias, but category “fits”	Usually rape/sexual assault sections
Trans woman	Medium (varies widely)	Misgendering; document gatekeeping; disbelief; “not a real woman” prejudice	Downgrade to lesser offences; reluctance to apply rape
Trans man	Low-Medium	“Men can’t be victims” bias; forced categorization as female; invisibility	Non-rape offences; assault/intimidation framing
Non-binary person	Low	Binary forms; forced sex classification; refusal to record identity	Reduced seriousness; procedural confusion
Intersex person (if transgender or gender-diverse)	Variable	Intrusive medicalization; privacy violations	“Medical issue” framing + undercharging

The BNS protection is unequal in binary norms in medical examination, documents, and evidence practices. Cases in police and hospitals can even require body verification or unnecessary invasive questions, compelling transgender survivors to either humiliate and potentially lose their case because it lacked evidence. Even in the event that the proper BNS section is implemented, evidence gathering is compromised by uncivilized identity-recording procedures, and therefore, the case is ruined by unfriendly procedures regardless of the proper BNS section being implemented.

“Access-to-Justice Terrain” Under BNS



Such a landscape explains why BNS protection cannot be measured based on the existence of offences only. The decisive barriers are commonly loaded at the previous stages of FIR and medical where the survivor is at the most vulnerable point and has less legal representation. A fierce punishment clause cannot work even when the complaint has not been documented, mismanaged evidence or when the victim withdraws after being harassed.

What “Unequal Protection” Looks Like in Outcomes

Stage	Ideal outcome	Common risk for transgender survivors	Why it happens
FIR registration	Immediate, accurate sections	Refusal/delay/wrong sections	Bias + confusion + discretion
Medical/forensic	Respectful exam, proper evidence	Humiliation, misgendering, unsafe spaces	Lack of protocol + stigma
Charging	Appropriate high-gravity offences	Downgrading to lesser offences	Gendered definitions + gatekeeping
Trial	Dignity + confidentiality	Credibility attacks, outing	Courtroom bias + record practices
Remedy	Conviction/support	Withdrawal/compromise/impunity	System fatigue + fear

To conclude, the BNS is an effective tool in punishing sexual crimes, and its sexual violence framework is unequally available to transgender individuals due to the nature of the two major categories of the law that is not oriented towards gender diversity and the application of the framework in institutions that often reproduce cisnormative ideology.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 (TPPR ACT): PROMISE OF PROTECTION, LIMITS IN SEXUAL VIOLENCE RESPONSE

The Transgender Persons (Protection of Rights) Act, 2019 (TPPR Act) is the main rights-oriented law in India that is expected to acknowledge transgender people as equal citizens and outlaw discrimination in respect of education, employment, health, access to publicity, and place of residence. The TPPR Act is a constructivist/welfare-oriented criminal law as opposed to the BNS which is more of a constructivist/punitive criminal law. But when evaluated particularly in the prism of sexual victimization, the Act has one significant limitation namely, it is procedurally thin in terms of its survivor-facing mechanisms that is, it is not a working solution as an effective first-response or accountability measure in instances involving the sexual victimization of transgender persons.

One of the significant contributions of the TPPR Act is normative: the state is put into a responsibility to make sure that transgender people do not become deprived of the fundamental services and opportunities. This has an indirect effect on sexual violence since exclusion (housing, education, jobs, and healthcare) predisposes vulnerability, dependency, and exposure to risks. However, the protective guarantee of the Act starts to become less tangible at the moment when a transgender survivor requires urgent solutions safe shelter, crisis health services, police security, legal assistance, privacy, and a complaint system against institutional abuse. In most sexual violence instances, the primary force that prevents the survivor is not the lack of crime in a piece of paper, but the denial of the survivor to be treated with dignity by the institution. The TPPR Act fails to establish a strong enforcement avenue that would be in place in that scenario.

What TPPR Act Covers vs. What a Sexual Violence Survivor Needs

TPPR Act’s core orientation	Typical survivor needs after sexual violence	Practical gap
Non-discrimination principle	Immediate, safe access to police and hospitals	No detailed crisis-response protocol
Welfare and inclusion measures	Safe shelter and protection from further harm	Limited clarity on emergency housing standards
Recognition and identity framework	Confidential handling of identity information	Weak enforcement against outing/misgendering
Institutional roles (authorities)	Fast complaint redressal against officials	Complaint pathways often unclear/slow

The enforcement design is also important. TPPR Act is dependent much on administrative frameworks and broad principles instead of definite, binding duties on front line facilities (police stations, hospitals, shelter homes). The distinction between the not should not discriminate in a sexual violence scenario and must do X in Y hours is tenacious. In the absence of time-limited obligations, standard operating procedures,

and penalties against violations, survivors can still experience routine gatekeeping in the form of refusal to file complaints properly, forceful so-called verifications of the gender, refusal to admit to the ward, or placing them in gender-segregated shelters that are not very safe.

Meanwhile, the TPPR Act is still significant as a reconciliation between the constitutional rights and everyday leadership. Its anti-discrimination requirement can be employed to advocate trans-affirming procedures in hospitals, jails, shelters, and police preparation institutions, as well as to dispute policies that place transgender survivors in unsafe environments. To have the TPPR Act do anything meaningful in terms of sexual victimization, it would require more operational characteristics: mandated standards of crisis response, explicit institutional discrimination penalties, confidentiality of survivors, and coordinated integration with criminal legal actions.

TPPR Act's Role in Sexual Violence Cases

Stage	How TPPR Act can help	What still remains weak
Before violence (prevention)	Inclusion reduces vulnerability	Implementation uneven
During reporting	Basis to demand non-discrimination	No strong "must-do" procedural duties
After reporting (support)	Push for safe shelter/healthcare access	Limited accountability + unclear remedies

Concisely, the TPPR Act is essential to help define that people of transgender status deserve equal citizenship and non-discriminatory access to services, yet this act is not intended to be a broad sexual violence response legislation. It is valuable in providing rights-claims and institutional reform but at a price, namely, the fact that there are no detailed, enforceable, survivor centered mechanisms at the point when protection is most desperately needed.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO): A GENDER-NEUTRAL FRAMEWORK, BUT IMPLEMENTATION DETERMINES INCLUSION

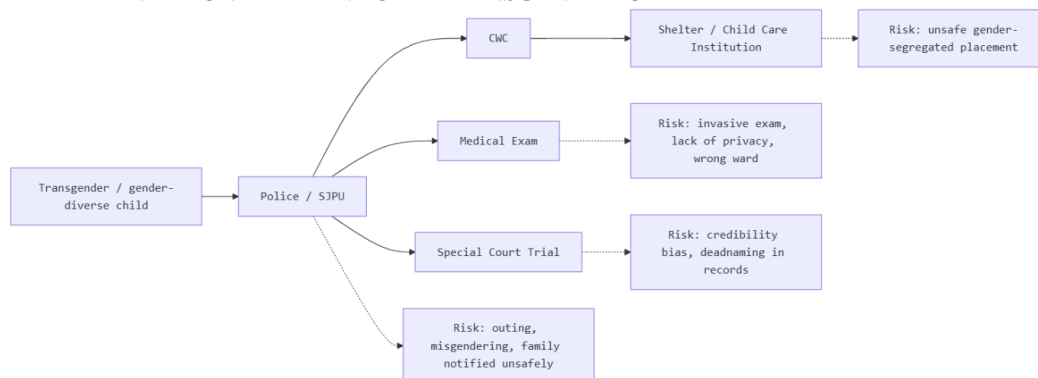
The Protection of Children from Sexual Offences Act, 2012 (POCSO) is the least structurally exclusionary of the three laws in question as it is formulated in terms of a unified core status childhood, but not between two gender categories. Theoretically, this makes POCSO especially important to transgender children and gender-diverse minors which are often sexually victimized in situations of family rejection, homelessness, institutionalization, or forced dependency. However, unlike most of the general criminal law provisions where, historically, a cisgender female victim has been the centre of attention, POCSO is framed in such a way that the child is the victim in need of protection, which ought to enable a transgender child to be considered a victim without having to demonstrate that their identity fits a pre-established gender category. Nevertheless, POCSO is not as effective as it is claimed to be when it comes to transgender children because its efficacy varies not based on its text but on its implementation ecology police practices, medical practice, Child Welfare Committee (CWC) decisions, shelter placement, and court sensitivity. The main advantage of POCSO is the gender-neutral definitions of sexual crimes and child-friendly processes. It makes illegal a spectrum of actions as much as harassment up to penetrative and aggravated assaults without a victim having to be a girl or the offender a man. This is important since the transgender children might be victimized by relatives, peers, authority figures, or guardians, and the violence might involve both sexual and identity-based coercion (such as punishment due to gender expression). A gender-neutral law, in these instances, minimizes the possibility that the police will not take the incident with the seriousness it warrants due to the victim not being viewed as a victim in a gender-structured understanding of rape. The other supportive processes that are highlighted in POCSO include child-friendly reporting and anti-intimidation features which, appropriately implemented, will mitigate secondary victimization of transgender children.

Why POCSO is Structurally More Inclusive

Feature	What it means in POCSO	Why it helps transgender children
Child-centred focus	"Child" is the protected category	No need to fit binary victim model
Gender-neutral offence design	Sexual assault defined without victim gender	Trans boys/non-binary minors still covered
Range of offences	From harassment to aggravated assault	Captures diverse forms of coercion/abuse
Child-friendly procedures	Support person, safer statements, reduced confrontation	Can reduce institutional trauma

Though these strengths are present, inclusion of transgender under POCSO can fail at the operational level since the system employed to execute POCSO is usually highly cis-normative. First, during the first encounter with the police, misgendering, deadnaming, or revealing identity may occur and in particular may be damaging in situations where family is a cause of violence or rejection. Second, medical check-up and gathering of evidence may turn into the place of humiliation in case the staff considers gender diversity as an anomaly or demands invasive methods of sex verification. Third, POCSO can be defeated at a placement decision level: when a transgender child cannot go home safely, CWCs and shelter systems may refer to a gender-separated facility that does not reflect the identity and exposes them to harassment or additional violence.

POCSO IMPLEMENTATION TERRAIN FOR A TRANSGENDER CHILD



The point that this map makes is that, despite the neutrality of the law, transgender kid can feel like he or she is under protection by means of spying or being punished, in case institutions are not prepared and responsible. Existence of supportive reporting environment should entail confidentiality, polite language as well as knowledge that disclosure of gender identity may incite actual risk. Similarly, child-friendly cannot be lapses into the softened procedures but needs identity-affirming safety planning.

Inclusion vs. Exclusion Under POCSO

Stage	What POCSO intends	What can go wrong for transgender children	Inclusion hinge
Reporting	Easy, safe complaint registration	Outing, ridicule, refusal to record identity	Training + confidentiality
Care & protection	Safe interim care	Misplacement in hostile shelters	Trans-affirming placement standards
Evidence collection	Child-sensitive process	Invasive/irrelevant questioning	Protocol + oversight
Trial	Reduced trauma, fair hearing	Bias and identity-based shaming	Court sensitivity + record practices

Overall, POCSO provides the best statutory basis of the three in regards to protecting transgender survivors who are minors, as its protections are not based on binary gender terms and project a child-centered process. However, in the case of transgender children, the biggest danger is the fact that the institutions implementing the program view gender diversity as a problem to be addressed as opposed to an identity that should be respected. Consequently, only in the case when the wider system of child protection police, hospitals, CWCs, and shelters are working with trans-affirming procedures, confidentiality protection, and responsibility to discriminatory behaviour, the so-called POCSO advantage will become reality.

COMPARISON: BNS VS TPPR ACT VS POCSO

In the three structures, the BNS is the best on punishment and the worst on supportive recognition; TPPR Act is the best on language of rights but the worst on crisis response; and POCSO is most textually comprehensive to minor, and its effects are mostly dependent on how it is implemented. The sexual offence system of BNS still has a high degree of the gendered structure and, therefore, transgender survivors are prone to under-charging and credibility gatekeeping at the FIR level. TPPR Act does not allow discrimination, and it can be used to impose demands to treat the victim dignity, but does not provide time-bound, survivor-encompassing procedures (safe reporting, shelter standards, the enforcement of confidentiality). By ensuring that the child is prioritized over gender, POCSO is more successful at addressing transgender children on paper, but institutional practices (outing, misgendering, placing transgender children in unsafe shelters, etc.) can still recapitulate exclusion. In essence, the difference in the key focuses of the law is the most effective at conviction/punishment (BNS), policy/equality claims (TPPR Act), and child-specific procedures (POCSO), in case of being sensitively applied.

Law	Strength	Main gap	Best fit
BNS	Strong penalties	Gendered structure	Adult prosecution
TPPR Act	Non-discrimination	Weak enforcement	Institutional reform
POCSO	Gender-neutral child focus	Implementation bias	Minors' protection

CONCLUSION

When comparing the Bharatiya Nyaya Sanhita, 2023 (BNS), the Transgender Persons (Protection of Rights) Act, 2019 (TPPR Act), and the Protection of Children from Sexual Offences Act, 2012 (POCSO) it can be seen that how well transgender victims get justice in India is much more dependent on the permeability of the institutions in the first reporting and protective steps than it is on whether the offences are formally recognisable. BNS provides the primary prosecution and punishment route on the law of criminal, which can be diminished by practice in gendered assumptions in policing and prosecution. The latter regularly leads to the harm being miscategorized, unwillingness to apply rather serious provisions, and treating transgender complainants like exceptions instead of rights-bearing citizens. TPPR Act itself is a critical necessity of dignity and non-discrimination, but it is more of a rights framework that is implemented inconsistently and does not always have a direct and on-the-job bearing on police stations, hospitals, and shelters. Even though POCSO is relatively inclusive to minors as it is child-centred and mostly gender-neutral, it still necessitates child protection institutions that can place transgender children at risk of outing, stigmatisation, and unsafe gender-segregated placements. In general, the three laws demonstrate that the weak point of protection lies at the front of the system; FIR registration, medical care, crisis support, and placement; the discretion and bias may supersede the intent of the law.

SUGGESTIONS

- It suggests the adoption of binding standard-operating procedures of policing, medical and shelter agencies and enforces respected recording of identity, confidentiality measures to avoid outing and use of survivor-focused interview and evidence gathering.
- Under-charging under the BNS provision should be prevented by developing the guidance of the charging, introducing the supervisory review in the cases, when some serious provisions are not applied, as well as compelling written explanations of any decisions to downgrade.
- The Transpersonal protection Rights Act has to be operationalised by means of instituting time-limited grievance redress system concerning refusal to file FIR, to get medical treatment or shelter and to impose departmental disciplinary action against discriminatory refusals.
- The provision of identity-affirming child-whistle-blowing cells, the establishment of the principles of safe placement, and the frequent review of inclusive shelter options should be considered as assurance of trans-affirming child protection according to the Protection of Children against Sexual Offence Act.
- There should also be increased responsibility mechanisms through holding semi-annual audits, a confidential complaints system, and privacy preserving data-collection procedures that allow monitoring of the outcomes but ensures privacy of the survivor.

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