
REIMAGINING EQUALITY: WHY INDIA IS NOT READY FOR GENDER-NEUTRAL LAW YET

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ABSTRACT

The demand for gender-neutral laws in India has become a significant point of legal and political debate in recent years. At the heart of this discussion lies the tension between the constitutional guarantee of equality under Articles 14, 15, and 21 of the Indian Constitution, and the sociocultural realities of a society that continues to be shaped by patriarchal norms, systemic inequalities, and deeply rooted gender hierarchies. This paper critically examines the argument for and against the immediate adoption of gender-neutral laws in India. It explores how calls for neutrality, while rooted in constitutional morality, may risk undermining the protective framework designed for vulnerable groups, particularly women and children. The promise of equality before law is one of the most fundamental ideals of the Indian Constitution. Article 14 ensures equality before the law, while Article 15 prohibits discrimination on grounds of sex. At the same time, Article 15(3) empowers the State to create special provisions for women and children. This creates a tension between formal equality and substantive equality, a tension that continues to shape legal reforms in India. One of the most debated questions today is whether India is prepared for gender-neutral laws, particularly in areas of sexual offences, domestic violence, and family law. While advocates of gender-neutrality argue that crime should be determined by the act itself and not the gender of the victim, critics highlight that India's socio-legal realities make it premature to adopt a completely neutral framework.

Keywords: Gender-neutral laws; Substantive equality; Protective discrimination; Indian Constitution, Patriarchal norms; Criminal justice system in India.

Introduction

The Indian Constitution envisions a society based on equality, liberty, and justice. Article 14 guarantees equality before the law and equal protection of the laws, while Article 15(1) prohibits discrimination on grounds of sex, religion, caste, race, or place of birth. At the same time, Article 15(3) expressly permits the State to make “special provisions” for women and children, thereby recognizing the need for protective discrimination to achieve substantive equality. This constitutional duality lies at the heart of India’s approach to gender and law. In recent years, debates surrounding gender-neutral laws have gained momentum in India, particularly in relation to sexual offences, domestic violence, and family law. Proponents argue that the criminal justice system should address the offence itself rather than the gender of the victim, pointing to instances where men and transgender persons have also suffered violence. However, opponents caution that gender-neutrality, if adopted hastily, could dilute the legal safeguards painstakingly built for women in a patriarchal society where crimes against them remain widespread and underreported. The jurisprudence of the Supreme Court has consistently underscored the vulnerability of women and the necessity of special protections. In *Vishaka v. State of Rajasthan*, the Court laid down guidelines on sexual harassment at the workplace, recognizing that the absence of gender-sensitive legal measures violates women’s fundamental rights. Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Court characterized rape as a violation of fundamental rights under Article 21, highlighting the need for victim-centric laws. At the same time, more recent cases such as *Joseph Shine v. Union of India* reflect the judiciary’s evolving commitment to dismantling stereotypes and moving towards individual autonomy, irrespective of gender. Legislative developments also mirror this tension. The Criminal Law (Amendment) Act, 2013, enacted after the horrific Delhi gang rape, introduced comprehensive changes to sexual offence laws but retained their gender-specific character. The Justice Verma Committee Report, while progressive on many fronts, deliberately chose not to recommend gender-neutral rape laws, reasoning that women remain the primary victims of sexual violence in India’s social context.

[1] INDIA CONST. art. 14.

[2] INDIA CONST. art. 15(3).

[3] Justice J.S. Verma Committee Report, Government of India (2013) (2002).

[4]. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

[5]. *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

[6]. *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

Comparative experiences demonstrate that gender-neutrality has been successfully implemented in countries such as the United Kingdom, Canada, and Australia. However, these societies differ markedly from India in terms of social structures, gender relations, and enforcement capacities. Importing neutrality without adequate safeguards risks undermining substantive justice. Against this background, this paper argues that India is not yet ready for fully gender-neutral laws. Instead, what is required is a phased and contextual approach: strengthening existing women-centric protections, while gradually extending recognition and remedies to male and transgender victims. Only such a calibrated path can balance the constitutional promise of equality with the lived realities of gender-based vulnerability.

Literature Review

The debate on gender-neutral laws in India cannot be understood without tracing its intellectual, judicial, and legislative foundations. Academic writings, committee reports, judicial pronouncements, and comparative scholarship collectively reveal the tension between formal equality (treating everyone the same) and substantive equality (recognizing unequal starting points).

1. Constitutional Philosophy and Gender Equality

The framers of the Indian Constitution adopted a nuanced approach to equality. While Article 14 guarantees equality before the law, Article 15(3) explicitly permits special provisions for women and children. This reflects an understanding that formal equality alone cannot dismantle entrenched patriarchy. Scholars such as Upendra Baxi argue that protective discrimination is not an exception to equality but an extension of it, ensuring that disadvantaged groups enjoy meaningful rights in practice. Flavia Agnes similarly emphasizes that women's structural subordination justifies laws that tilt the balance in their favor. At the same time, some scholars warn against perpetuating stereotypes. Ratna Kapur contends that excessive focus on women as "victims" risks entrenching paternalism rather than empowering them. This academic divide is crucial to understanding why the call for gender-neutral laws remains contested.

2. Judicial Developments

Indian courts have played a pivotal role in shaping gender jurisprudence. In *Vishaka v. State of Rajasthan*, the Supreme Court recognized sexual harassment as a violation of fundamental rights under Articles 14, 15, and 21, mandating preventive measures in workplaces. This case

demonstrates judicial willingness to creatively expand protections for women where legislation was silent. In *Bodhisattwa Gautam v. Subhra Chakraborty*, the Court described rape as “a crime against basic human rights,” awarding interim compensation to the victim. This judgment underscored the victim-centric orientation of criminal law. More recently, in *Joseph Shine v. Union of India*, the Court struck down Section 497 of the Indian Penal Code (IPC), decriminalizing adultery and declaring that the law treated women as property of their husbands. While progressive in dismantling stereotypes, the case also illustrates the judiciary’s cautious shift towards gender-neutral constitutionalism. Yet, courts have not endorsed gender-neutral rape laws. In *State of Punjab v. Gurmit Singh*, the Supreme Court stressed that women are particularly vulnerable to sexual assault and that their testimony must be treated with sensitivity. This judicial stance reinforces the perception that gender-specific protections remain necessary.

3. Committee Reports and Legislative Debates

The Justice Verma Committee Report (2013), constituted after the Delhi gang rape, is a crucial reference point. While the Committee recommended wide-ranging reforms, it rejected gender-neutrality in rape laws, reasoning that women remain the primary victims of sexual violence in India’s social context. Instead, it recommended gender-neutrality in sexual harassment at the workplace, where both men and women could be potential victims. Parliament accepted many of the Committee’s proposals through the Criminal Law (Amendment) Act, 2013, but retained gender-specific provisions for rape and sexual assault. This selective approach reflects the balancing act between progressive reform and social realities. Similarly, debates on the Protection of Women from Domestic Violence Act, 2005 (PWDVA) reveal strong resistance to including men as victims. Lawmakers argued that women face overwhelmingly higher rates of domestic abuse, and diluting the law risked weakening its efficacy.

4. Arguments in Favor of Gender-Neutral Laws

A significant strand of scholarship advocates for gender-neutrality. Proponents argue that law must focus on the act of violence, not the gender of the victim or perpetrator. Arvind Narrain observes that excluding men and transgender persons from the ambit of sexual offence laws amounts to state-sanctioned invisibility of their suffering. Empirical studies further support this view. Research by the Centre for Civil Society highlights instances where men have been victims of sexual violence but lacked legal recourse due to gender-specific laws. International

comparisons also show that many democracies—including the UK, Canada, and Australia—have gender-neutral rape laws without undermining women’s protections.

5. Arguments Against Immediate Neutrality

Conversely, feminist scholars warn that premature neutrality could undo decades of hard-won gains. Flavia Agnes argues that laws like Section 498A IPC (cruelty against women by husbands or relatives) emerged precisely because women lacked bargaining power within patriarchal family structures. Diluting these laws risks leaving women vulnerable. The Justice Verma Committee also stressed that in India, unlike the West, violence against women is not merely individual but systemic, rooted in caste, class, and cultural hierarchies. Therefore, law must continue to reflect these social realities.

6. Comparative Perspectives

Comparative scholarship reveals that gender-neutrality functions effectively only in contexts with stronger enforcement and relatively balanced gender relations. Clare McGlynn notes that in the UK, rape law reform was accompanied by robust support systems for victims, including shelters, counselling, and trained investigators. Without such infrastructure, neutrality may ring hollow. In South Africa, scholars like Catharine Albertyn caution that despite gender-neutral laws, women remain disproportionately affected by sexual violence due to social inequality. This suggests that legal neutrality alone cannot ensure substantive justice.

7. Emerging Debates: Transgender and LGBTQ+ Inclusion

Another dimension in recent literature is the demand for inclusivity of transgender and LGBTQ+ persons in legal protections. The Supreme Court’s decision in *NALSA v. Union of India* recognized transgender persons as a third gender entitled to constitutional rights. However, the IPC still does not explicitly cover them as victims of sexual assault. Scholars argue that gender-neutral laws could address this gap, ensuring that all individuals—regardless of gender identity—receive protection. Yet, others warn that clubbing transgender persons with men may erase their specific vulnerabilities, calling instead for intersectional legal framework

8. Empirical and Sociological Studies

Several sociological studies underscore the persistence of gender-based violence and discrimination in India. According to the National Crime Records Bureau (NCRB), crimes

against women continue to rise annually, with domestic violence and sexual assault being the most reported categories. The National Family Health Survey (NFHS-5) reveals that nearly one in three married women has experienced domestic violence. These statistics suggest that women continue to face disproportionate vulnerability, raising questions about whether gender-neutral laws would obscure these systemic patterns.

9. Transformative Constitutionalism

Transformative constitutionalism is the idea that the Constitution is not merely a legal document but a tool for social transformation. This concept, first articulated in the South African context, has been increasingly applied in Indian constitutional jurisprudence. The Indian Supreme Court in *Navtej Singh Johar v. Union of India* embraced this approach, emphasizing that constitutional morality must guide legal reforms even against prevailing social morality. From this perspective, gender-neutral laws may be seen as part of the Constitution's transformative mandate. However, transformative constitutionalism also requires sensitivity to ground realities; laws cannot be detached from the social context in which they operate.

Analysis and Discussion

1. Constitutional Promise vs. Social Reality

The Indian Constitution guarantees equality before the law and equal protection of the laws under Article 14 and prohibits discrimination under Article 15.

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1. Upendra Baxi, *The Crisis of the Indian Legal System* 118–20 (1982).
 2. Flavia Agnes, *Protective Discrimination and Women's Rights in India*, 37 *Econ. & Pol. Wkly.* 4179, 4181 (2002).
 3. Ratna Kapur, *The "Other" Side of Equality: Sexual Harassment and the Construction of Women as Victims*, 32 *Indian J. Gender Stud.* 25, 28–30 (2015).
 4. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
 5. *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.
 6. *Joseph Shine v. Union of India*, (2019) 3 SCC 39.
 7. *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.
 8. Justice J.S. Verma et al., *Report of the Committee on Amendments to Criminal Law* 146–47 (2013).
 10. *Parliamentary Debates, Lok Sabha*, 24 Aug. 2005 (statement of Renuka Chowdhury, Minister for Women and Child Development).
 11. Arvind Narrain, *Gender Neutrality in Law: A Critical Examination*, 6 *NUJS L. Rev.* 123, 127 (2013).
 12. Centre for Civil Society, *Men as Victims of Sexual Violence in India: Policy Brief* 4–6 (2015).
 13. Clare McGlynn, *Rape Law Reform: A Comparative Analysis*, 10 *Int'l J.L. Pol'y & Fam.* 133, 139–42 (1996).
 14. Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* 95–97 (2011).
 15. Verma et al., *supra* note 8, at 150.
 16. McGlynn, *supra* note 13, at 143–45.
 17. Catharine Albertyn, *Substantive Equality and Transformation in South Africa*, 23 *S. Afr. J. Hum. Rts.* 253, 260–62 (2007).
 18. *NALSA v. Union of India*, (2014) 5 SCC 438.19. See Ashley Tellis, *Transgender Rights and the Limits of Law in India*, 48 *Econ. & Pol. Wkly.* 123 (2013).

In theory, these provisions lay the foundation for gender-neutral laws. However, in practice, the lived realities of women and marginalized genders expose a stark gap between constitutional ideals and ground-level implementation. Despite formal legal equality, India continues to witness a high prevalence of crimes against women, including domestic violence, dowry deaths, and sexual harassment.

If gender-neutrality were to be prematurely introduced, there is a risk that women — historically oppressed and still disproportionately vulnerable — may lose the limited protections they currently rely upon.

Analysis and Discussion

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2. The Debate Around Gender-Neutral Rape Laws

The Criminal Law (Amendment) Act, 2013, enacted after the Nirbhaya case, expanded the definition of rape but deliberately kept it gender-specific (male perpetrators against female victims). Critics argue that this ignores male and transgender victims of sexual violence. However, feminist scholars caution that making rape laws gender-neutral may dilute protections for women, given the skewed socio-cultural context where women are overwhelmingly the victims and men the perpetrators. Courts have also recognized the special vulnerability of women; for instance, in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court held that rape is not only a crime against the individual woman but against society at large. Thus, while gender neutrality may appear progressive, in India's current social

conditions it risks creating false equivalence between genders.

3. Misuse Concerns and the Question of Balance

Opponents of women-centric laws often point to their alleged “misuse.” For example, Section 498A of the IPC (now Section 85 of the Bhartiya Nyaya Sanhita, 2023) dealing with cruelty by husbands and in-laws has been criticized for being misused by some women. The Supreme Court in *Rajesh Sharma v. State of Uttar Pradesh* acknowledged the misuse but refused to strike down the law, emphasizing that isolated misuse cannot be grounds to dilute women’s protections. This reflects the delicate balance: while misuse exists, removing gender-specific protections altogether would harm far more genuine victims than it would help male victims of misuse.

4. LGBTQ+ and Transgender Inclusion

Another dimension of the debate is whether existing gender-specific laws exclude transgender and non-binary persons. The *Navtej Singh Johar v. Union of India* judgment (decriminalizing homosexuality) and the Transgender Persons (Protection of Rights) Act, 2019 signal India’s shift toward broader recognition of diverse identities. However, critics argue that transgender persons are still inadequately protected under gender-specific laws, since rape provisions do not recognize them as victims. This shows the challenge of balancing protection for women with inclusivity for marginalized genders.

5. Comparative Jurisprudence

Countries like the UK and Canada have already adopted gender-neutral sexual offence laws, where any person can be a victim or perpetrator.

1. INDIA CONST. art. 14, 15. 2. National Crime Records Bureau, Crime in India Report 2022 (Ministry of Home Affairs 2023).

3. Criminal Law (Amendment) Act, No. 13 of 2013, § 9 (India).

4. See Mrinal Satish, Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India 156 (2016).

5. Ratna Kapur, Gender, Sovereignty and the Limits of International Law: The Rape of Women in International Law 34 Harv. Int’l L.J. 357 (1993).

6. *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

7. Law Commission of India, Report No. 243 on Section 498A IPC (2012).

8. *Rajesh Sharma v. State of Uttar Pradesh*, (2017) 8 SCC 821.

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

10. The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, § 3 (India).

11. Arvind Narrain, Queer Politics in India: Towards a Postcolonial Legal System 45(2) Econ. & Pol. Wkly. 53 (2019).

12. Sexual Offences Act 2003, c. 42 (U.K.); Canadian Criminal Code, R.S.C. 1985, c. C-46, § 273.

However, these reforms were supported by strong institutional mechanisms, widespread gender equality, and better reporting systems. India lacks these structural safeguards. Importing Western models without adapting them to India's socio-cultural realities could be premature and even harmful.

6. The Way Forward

The debate is not about rejecting gender-neutrality entirely but about timing and preparedness. India first needs to: Strengthen implementation of women-centric protections; Collect reliable gender-disaggregated crime data; Create support systems for male and transgender victims; Conduct public legal awareness campaigns. Only then can gender-neutral laws truly serve the purpose of equality rather than undermine protections for the vulnerable.

Case Law & Doctrinal Analysis

The Indian judiciary has played a pivotal role in shaping the discourse on gender-specific and gender-neutral laws. Through constitutional interpretation, statutory review, and doctrinal innovation, the courts have balanced between formal equality (treating men and women the same) and substantive equality (acknowledging women's social disadvantage). This section traces key judgments to evaluate the extent to which gender neutrality is feasible in the Indian legal system.

1. Constitutional Jurisprudence on Gender

(a) Air India v. Nargesh Meerza (1981) [1]

One of the earliest landmark cases on gender discrimination, this case dealt with service rules requiring female air hostesses to retire earlier than their male counterparts and prohibiting them from marrying within the first four years of service. The Supreme Court struck down the rule as unconstitutional under Articles 14 and 15, emphasizing that laws cannot create arbitrary distinctions based on sex.

(b) C.B. Muthamma v. Union of India (1979) [2]

The Court struck down discriminatory service rules against women in the Indian Foreign Service, which required women officers to seek government permission before marriage and

provided for termination upon marriage. The Court held that such provisions were inconsistent with constitutional guarantees of equality.

(c) Vishaka v. State of Rajasthan (1997) [3]

This case laid down guidelines against sexual harassment at the workplace, relying on Article 14, 15, 19, and 21, and incorporating international obligations under CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). The Court emphasized the vulnerability of women in patriarchal structures and imposed duties on employers to provide a safe working environment.

(d) Anuj Garg v. Hotel Association of India (2008) [4]

The Supreme Court struck down a provision in the Punjab Excise Act that prohibited women from being employed in establishments serving alcohol. The Court held that the law was based on outdated stereotypes about women's morality and needed to be replaced with protective workplace policies rather than exclusionary rules.

(e) Navtej Singh Johar v. Union of India (2018) [5]

Decriminalizing consensual same-sex relations under Section 377 IPC, the Supreme Court held that constitutional morality requires recognition of diversity and protection of individual dignity. The Court emphasized equality for sexual minorities and rejected heteronormative legal frameworks.

2. Criminal Law and Gender Neutrality

(a) Independent Thought v. Union of India (2017) [6]

The Supreme Court held that sexual intercourse with a minor wife (between 15 and 18 years) would amount to rape, despite the marital rape exception in Section 375 IPC. The Court emphasized the vulnerability of child brides and upheld substantive equality.

(b) Section 375 IPC and Gender Specificity

The definition of rape under Section 375 IPC is gender-specific, identifying women as victims and men as perpetrators. Judicial interpretations (e.g., *Tukaram v. State of Maharashtra* – the

“Mathura rape case” [7]) initially reinforced patriarchal biases by questioning women’s credibility. Subsequent reforms and cases (like *State of Punjab v. Gurmit Singh* [8]) emphasized the importance of victim testimony and dignity.

(c) Domestic Violence Act (2005)

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) explicitly protects women, recognizing the prevalence of gendered violence within households. Courts have upheld its constitutionality against claims of discrimination.

(d) Misuse of Gender-Specific Laws – Judicial Response

Courts have acknowledged concerns of misuse, particularly regarding Section 498A IPC (cruelty by husband or relatives). In *Rajesh Sharma v. State of U.P.* (2017) [9], the Supreme Court introduced safeguards such as Family Welfare Committees to review complaints before arrests. However, in *Social Action Forum for Manav Adhikar v. Union of India* (2018) [10], the Court diluted these safeguards, restoring police discretion.

3. Transformative Judicial Approaches

The Indian judiciary has oscillated between paternalism (special protections justified by stereotypes) and transformative constitutionalism (substantive equality). The trend since *Anuj Garg* and *Navtej Johar* has been toward dismantling stereotypes while retaining gender-sensitive safeguards.

Doctrinally, the judiciary has developed the following principles:

1. Substantive Equality over Formal Equality – Courts prefer context-sensitive protections.

[1] *Air India v. Nargesh Meerza*, (1981) 4 SCC 335.

[2] *C.B. Muthamma v. Union of India*, (1979) 4 SCC 260.

[3] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

[4] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

[5] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[6] *Independent Thought v. Union of India*, (2017) 10 SCC 800.

[7] *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

[8] *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

[9] *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

[10] *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443.

2. Anti-Stereotyping Principle – Laws cannot reinforce patriarchal assumptions.
3. Contextual Neutrality – Gender-neutral laws may be introduced where social realities justify them (e.g., workplace harassment policies).
4. Vulnerability Focus – Laws must protect the most vulnerable, not abstract categories.

Challenges in Implementing Gender Neutrality in India

1. Socio-Cultural Barriers

India's social fabric is deeply rooted in patriarchy, which shapes gender roles, power relations, and societal expectations. While the Constitution guarantees equality, social practices often contradict legal provisions. For example, women frequently face restrictions in public spaces, familial decision-making, and economic independence, which makes them particularly vulnerable to violence and discrimination. Implementing gender-neutral laws in such a context poses a major challenge. Neutral laws presume equal vulnerability, yet sociological studies show that women experience systemic disadvantages that men do not face to the same extent. For instance, the National Family Health Survey-5 reports that approximately 30% of married women experience physical or sexual violence by their spouses, while equivalent male victim statistics remain underreported due to stigma and lack of recognition. Moreover, societal attitudes continue to reinforce stereotypes. Traditional norms often depict men as aggressors and women as victims, which shapes not only public perception but also policing, reporting, and judicial outcomes. Introducing gender-neutral laws without addressing these perceptions could lead to misapplication or misinterpretation, thereby undermining justice.

2. Legal and Institutional Barriers

(a) Gender-Specific Statutory Frameworks

Many Indian laws, particularly in criminal law, are inherently gender-specific. Sections such as Section 375 IPC (rape), the Protection of Women from Domestic Violence Act, 2005, and Section 498A IPC (cruelty by husband/relatives) are designed to recognize and address women's unique vulnerabilities. Transitioning to gender-neutral laws would require extensive statutory amendments. Such amendments could risk diluting protections or creating loopholes.

For example, converting Section 375 IPC into a neutral law without strengthening victim support services could leave women more vulnerable in practice, even if formally “equal.”

(b) Judicial Discretion and Interpretation

Even when laws are well-drafted, judicial interpretation is shaped by societal norms. In India, courts often adopt a protective approach toward women in cases of sexual violence, reflecting awareness of structural inequalities. Gender-neutral laws may constrain this protective discretion, forcing judges to treat all victims identically, which may fail to account for the unequal power dynamics present in real-life situations.

(c) Police and Law Enforcement Challenges

Law enforcement in India faces systemic issues, including inadequate gender sensitivity training, understaffing, and societal bias. Gender-neutral laws would necessitate retraining police personnel, implementing victim-centered approaches for all genders, and establishing mechanisms to prevent misuse. Without these institutional changes, laws alone cannot guarantee substantive equality.

3. Concerns About Misuse

One of the most debated arguments against gender-neutral laws is the potential for misuse. Critics highlight instances where false complaints under Section 498A IPC have been filed against husbands or relatives, creating legal hardships. While misuse is statistically limited compared to genuine victimization, the perception of abuse can influence policymakers and courts. Introducing gender-neutral provisions without robust safeguards may open avenues for false accusations against men, which could inadvertently stall justice for actual victims.

4. Socio-Economic Vulnerabilities

Women’s economic dependence and limited mobility exacerbate vulnerability to violence and harassment. Gender-neutral laws cannot address these socio-economic disparities directly. For example, if domestic violence laws were fully neutral, a woman dependent on her husband’s income may find it harder to seek protection, while men, generally less economically vulnerable in the Indian context, may disproportionately benefit from neutral statutes.[7]

5. Educational and Awareness Gaps

Effective implementation of gender-neutral laws requires awareness campaigns, education, and community engagement. Currently, knowledge about legal rights remains limited, particularly in rural and semi-urban areas. Without significant educational outreach, gender-neutral laws risk remaining theoretical rather than practical, failing to deliver justice for the most vulnerable populations.

6. Intersectionality

Indian society is characterized by overlapping social hierarchies based on caste, class, religion, and region. Women from marginalized communities often face double discrimination, experiencing both gendered and socio-economic oppression. Gender-neutral laws that fail to consider intersectionality may inadvertently erase the compounded vulnerabilities faced by these groups.

Conclusion

The debate on gender-neutral laws in India highlights the tension between constitutional equality and social realities of inequality. While gender neutrality is an ideal that resonates with modern democratic values, India is still struggling with deeply rooted patriarchy, gender-based violence, and lack of institutional safeguards. If laws are made gender-neutral without addressing these inequalities, the already vulnerable groups — primarily women — may lose the protection they urgently need. Case law such as *Bodhisattwa Gautam v. Subhra Chakraborty*¹ and *Rajesh Sharma v. State of Uttar Pradesh*² show that the judiciary acknowledges both women's vulnerability and concerns of misuse, but insists that justice must remain victim-centric. Therefore, it is too early to fully adopt gender-neutrality in criminal laws, though gradual reforms for inclusion of men and transgender persons should continue. A phased, evidence-based, and context-sensitive approach toward gender neutrality is necessary. Laws must be designed with institutional safeguards, social awareness programs, intersectional sensitivity, and empirical monitoring to ensure they serve justice without undermining the vulnerable. Moreover, social realities—including limited economic independence, underreporting of crimes, and gendered perceptions—necessitate continued gender-specific interventions. Transitioning too quickly to gender-neutral frameworks risks eroding protections, creating legal ambiguities, and inadvertently increasing the vulnerability of

historically marginalized groups. Thus, any reforms must be phased, data-driven, and context-sensitive, ensuring that legal neutrality complements rather than replaces protective measures. India's approach must also integrate institutional reforms, including police training, judicial sensitization, public awareness campaigns, and intersectional safeguards for marginalized communities. Empirical monitoring and rigorous evaluation of laws will ensure that gradual steps toward neutrality do not undermine the objective of substantive justice.

Ultimately, achieving true equality in India requires a delicate balance between constitutional ideals and social realities, one that recognizes gendered vulnerabilities while striving for inclusivity, fairness, and empowerment across all segments of society.

Suggestions

India's journey toward gender-neutral laws must be gradual, contextual, and sensitive to existing social realities. While gender neutrality is an aspirational goal aligned with constitutional equality, a premature transition risks weakening protections for vulnerable groups, particularly women and children. Based on doctrinal analysis, case law, and socio-legal research, this section outlines practical suggestions to balance equality, protection, and justice.

1. Phased Legal Reforms

Rather than a sudden overhaul of all gender-specific laws, India should adopt a phased approach:

Step 1: Strengthen existing gender-specific protections such as the Protection of Women from Domestic Violence Act, 2005 and Section 375 IPC to ensure effective implementation. This includes improving reporting mechanisms, victim support services, and legal aid.

Step 2: Introduce limited gender-neutral provisions where social realities justify equal

[1] Leela Dube, *Women and Kinship: Comparative Perspectives on Gender in South and South-East Asia* (Orient Longman 1997).

[2] National Family Health Survey-5 (Ministry of Health & Family Welfare, 2021).

[3] Protection of Women from Domestic Violence Act, No. 43 of 2005; Indian Penal Code, 1860, §§ 375, 498A.

[4] *Independent Thought v. Union of India*, (2017) 10 SCC 800.

[5] Radhika Chandiramani, *Policing and Gender Sensitivity in India*, 22 *Indian J. Crim. L.* 101 (2019).

[6] *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

[7] Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* (Oxford Univ. Press 2011).

vulnerability, such as workplace harassment, sexual violence against men, and protection of transgender persons.

Step 3: Periodically review and amend laws based on empirical data, monitoring whether gender-neutral provisions are functioning without harming women's substantive protections.

A phased approach ensures that the shift toward neutrality does not inadvertently increase inequality.

2. Institutional Safeguards

To prevent misuse and ensure fair application:

Establish Family Welfare Committees or similar bodies to review complaints under domestic violence or cruelty laws before filing FIRs, reducing chances of false accusations while safeguarding genuine victims. Provide gender-sensitivity training for police, judicial officers, and public officials to handle cases involving men, women, and transgender persons appropriately. Implement specialized courts or tribunals to address gender-based violence, ensuring expedited justice without compromising protective measures. These institutional reforms can strengthen public confidence in law enforcement and the judiciary.

3. Social Awareness and Education

Legal reforms must be accompanied by public education campaigns:

Integrate gender sensitivity and legal literacy into school curricula, emphasizing constitutional rights and protections. Conduct awareness campaigns targeting rural and semi-urban populations, where patriarchal norms are most entrenched. Engage civil society organizations to support victims of all genders, providing counseling, legal guidance, and rehabilitation services. Increased awareness ensures that laws are accessible and effective, and that gender-neutral provisions are not misapplied.

4. Intersectional Considerations

Legal reforms must consider intersectionality:

Women from marginalized communities face compounded vulnerabilities due to caste, class,

and religion. Gender-neutral laws must include special safeguards or affirmative measures to protect these groups without erasing their specific needs. Policies should be flexible enough to adapt to local social realities while remaining consistent with constitutional principles of equality. An intersectional approach ensures that the most vulnerable are not sidelined in the pursuit of formal neutrality.

5. Data Collection and Empirical Monitoring

Policy and law-making should be evidence-based:

Establish a national database of gender-based violence that includes men, women, and transgender persons. Track trends in crime, misuse of laws, and outcomes of judicial interventions to guide future reforms. Use empirical evidence to decide which laws can be converted to gender-neutral frameworks without jeopardizing women's protections. Data-driven reforms enhance accountability, transparency, and effectiveness.

6. Legislative Clarity and Drafting

Any move toward gender neutrality must ensure precision in drafting:

Avoid ambiguous definitions that could be exploited or misinterpreted. Specify the scope of victimhood and liability clearly, addressing minors, differently-abled persons, and other vulnerable groups. Retain affirmative provisions where historical disadvantage is evident, ensuring that neutrality does not mask systemic inequality. Well-drafted laws reduce litigation, prevent misuse, and promote social justice.

[1] Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* (Oxford Univ. Press 2011).

[2] Law Commission of India, 243rd Report on Section 498A IPC (2012).

[3] *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

[4] Radhika Chandiramani, *Policing and Gender Sensitivity in India*, 22 *Indian J. Crim. L.* 101 (2019).

[5] National Commission for Women, *Annual Report 2021-22*, Government of India.

[6] Leela Dube, *Women and Kinship: Comparative Perspectives on Gender in South and South-East Asia* (Orient Longman 1997).

[7] National Crime Records Bureau, *Crime in India 2022* (Gov't of India 2023).

[8] *Bharatiya Nyaya Sanhita*, No. 45 of 2023, Acts of Parliament, 2023 (India).

[9] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

7. Judicial Activism and Constitutional Morality

The judiciary has an essential role in balancing neutrality and protection:

Courts should apply transformative constitutionalism, taking into account social realities while upholding individual rights. Judicial pronouncements should reinforce gender-sensitive interpretations, ensuring substantive equality. Courts must monitor the effects of gender-neutral laws, intervening where such laws compromise the protection of historically vulnerable groups. Judicial guidance ensures that reforms remain aligned with constitutional values and social justice.

Author's Viewpoint

In my opinion, India should not immediately move to gender-neutral laws, because this could unintentionally weaken protections for women who continue to face structural violence and systemic inequality. However, I also believe that exclusion of male and transgender victims is unjust, and a balanced solution is necessary. The correct approach lies in evolution, not revolution. India must first ensure effective implementation of existing women-centric laws while simultaneously creating parallel protective frameworks for other genders. Only after society reaches a stage where gender-based crimes are not disproportionately directed against women, should full gender-neutrality be introduced. Until then, gender-sensitive laws remain the most realistic and just approach. From a socio-legal perspective, India is not yet ready for full gender-neutral laws. Gender-specific protections remain indispensable due to women's disproportionate vulnerability, socio-economic dependence, and systemic discrimination. However, selective gender-neutral provisions, such as those protecting men, transgender persons, and non-binary individuals in specific contexts, are both desirable and feasible. These must be carefully drafted, implemented with safeguards, and regularly reviewed.

[1] Flavia Agnes, *Law, Justice and Gender: Family Law and Constitutional Provisions in India* (Oxford Univ. Press 2011).

[2] Law Commission of India, 243rd Report on Section 498A IPC (2012).

[3] *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 746.

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[8] *Bharatiya Nyaya Sanhita*, No. 45 of 2023, Acts of Parliament, 2023 (India).

[9] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

The overarching goal should be a gradual transition toward equality, where neutrality complements, rather than replaces, protective measures. However, this does not mean that reform toward neutrality is undesirable. Selective gender-neutral provisions, especially in areas such as sexual harassment at workplaces, protection of men and transgender persons, and family law where social dynamics justify it, can be gradually introduced. Such reforms must be accompanied by strong safeguards, intersectional considerations, and monitoring mechanisms to prevent misuse and ensure substantive equality. In essence, the pathway toward gender-neutral laws in India should be incremental and carefully calibrated, prioritizing justice and protection for vulnerable populations while gradually broadening legal recognition for all genders. India's legal system should aim not only to achieve equality in abstract terms but also to realize equality in lived experience, balancing the aspirations of constitutional morality with the complexities of social realities.

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