
REASSESSING GENDER EQUALITY: A CRITICAL ANALYSIS OF GENDER BIAS AND ASYMMETRY IN INDIAN STATUTORY FRAMEWORKS

R Ramesh Nadar, PhD Research Scholar,
ICFAI Foundation for Higher Education (IFHE) University

ABSTRACT

The constitutional commitment to equality and non-discrimination forms the foundation of India's legal framework. Articles 14, 15 and 16 of the Constitution guarantee equality before the law, prohibit discrimination on specified grounds, and promote equal opportunity. Several Indian statutory frameworks continue to adopt gender-specific classifications, differential standards, and protective measures that raise important questions regarding gender neutrality, constitutional justification, and the evolving understanding of gender justice. This research seeks to critically examine gender-based asymmetries embedded in Indian legislation and their compatibility with constitutional principles of equality, dignity and non-discrimination. The study proposes to analyse whether gender-specific statutory provisions constitute legitimate protective discrimination aimed at addressing historical and structural inequalities or, in certain circumstances, perpetuate stereotypes and unequal treatment. It also examines the extent to which laws framed predominantly around women's protection adequately address instances where men or persons of diverse gender identities may experience legal disadvantage. The research argues that gender justice cannot be achieved merely through gender-specific protection or formal equality before the law. The study seeks to identify areas where statutory reform may be necessary to make Indian laws more gender-sensitive, rights-oriented and substantively equal, while preserving legitimate measures designed to remedy historical disadvantage. Ultimately, the research aims to contribute to the development of a more balanced and inclusive conception of gender justice within the Indian constitutional framework.

Keywords: Gender Equality, Gender Bias, Gender Asymmetry, Substantive Equality, Constitutional Law, Article 14, Article 15, Gender Justice, Protective Discrimination, Legal Reform.

1. INTRODUCTION

Gender equality means equal rights, responsibilities and opportunities for women and men, while recognising that equality does not require women and men to be identical¹. The understanding of equality that has dominated Western thought since the time of Aristotle has been one of formal equality. Equality has been interpreted as 'treating likes alike', its constitutional expression in American and subsequently Indian equal protection doctrine, as the requirement that 'those [who are] similarly situated be treated similarly'².

The formal equality approach is reflected in the constitutional guarantee of equality under Article 14. However, the difficulty arises when the law itself creates categories based on gender. If legislation assumes that women are the exclusive victims of a particular form of harm and men are correspondingly presumed to be perpetrators, the question is no longer merely whether similarly situated persons are treated alike. The deeper question becomes whether the initial classification based on gender is itself justified.

For this paper, wherever the terms “other gender,” “opposite gender,” “other sex,” or similar expressions are used, they are intended to refer specifically to men in contrast to women, unless the context expressly indicates otherwise. These terms are used only to maintain the comparative framework of the study and are not intended to encompass gender diversity, transgender persons, non-binary persons, or other gender identities.

Objectives of the Study

1. To critically analyse gender bias and legal asymmetry in selected Indian statutes.
2. To comparatively analyse India, U.S., U.K., Canada and Australia legal frameworks concerning gender equality, gender-neutral legislation and protection against gender-based discrimination.
3. To suggest gender-inclusive legal and policy reforms consistent with substantive

¹<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/Towards-a-gender-responsive-implementation-of-UN-Convention-to-Combat-Desertification-en.pdf>

² Joseph Tussman and Jacobus Tenbroek, 'The Equal Protection of the Laws' (1949) 37 Calif L Rev 341; see also Haragopal Reddy, 'Equality Doctrine and the Indian Constitution' (1982) 45 Andhra Law Times 57, 58 ['All persons are to be treated alike. except where circumstances require different treatment']

equality and constitutional justice.

2. LITERATURE REVIEW

In India, gender-specific laws, while intended to protect women, can create legal asymmetries by excluding men and reinforcing the stereotype that men are predominantly perpetrators rather than victims³. Although gender-specific laws were introduced to address historically prevalent forms of discrimination and violence against women, changing social realities necessitate a critical reassessment of their scope and application⁴. Bhatia, in “Gender Discrimination in Indian Law: A Critical Analysis of Legal Protections for Men,” examines the exclusion of men from several women-centric legal frameworks, including sexual offences, domestic violence, workplace harassment, maintenance and matrimonial cruelty. The study argues that such gender-specific provisions may reinforce stereotypes of men as perpetrators and women as victims, and advocates gender-neutral reforms drawing on comparative models from the U.S., U.K., Canada and Australia⁵.

2.1 Formal equality Versus Substantive equality Versus Gender justice

Formal equality is based on the principle that persons who are similarly situated should be treated alike, without discrimination on prohibited grounds such as sex or gender. It focuses primarily on equal treatment and neutrality, rather than on the historical or structural circumstances that may place different groups in unequal positions. Kapur and Cossman describe formal equality as one of the two principal models through which constitutional equality and gender difference have been understood in India⁶.

Substantive equality goes beyond identical treatment and examines the actual effects of laws, policies and social structures on disadvantaged groups. It recognises that treating people identically may sometimes perpetuate existing inequalities and therefore permits differentiated treatment where necessary to address disadvantage, stereotyping, exclusion and structural

³ Rashid, Mohammad. (2025). TOWARDS GENDER-NEUTRAL LAWS: ADDRESSING BIASES IN THE INDIAN LEGAL FRAMEWORK. CC The Journal. 6. 2712-2720.

⁴ Ibid

⁵ Ratna Kapur and Brenda Cossman, "On Women, Equality and the Constitution: Through the Looking Glass of Feminism Ratna Kapur and Brenda Gossman" (2022) 16(1) National Law School Journal 10.55496/RKBC6573

⁶ Ratna Kapur and Brenda Cossman, "On Women, Equality and the Constitution: Through the Looking Glass of Feminism Ratna Kapur and Brenda Gossman" (2022) 16(1) National Law School Journal 10.55496/RKBC6573

inequality. Kapur and Cossman identify the movement from formal toward substantive understandings of equality as an important issue in Indian constitutional jurisprudence.

Sandra Fredman develops this idea further by identifying four dimensions of substantive equality: redressing disadvantage; addressing stigma, stereotyping, prejudice and violence; enhancing voice and participation; and accommodating difference while promoting structural change⁷.

Gender justice refers to the principle of ensuring equal and fair treatment of individuals, irrespective of gender, within legal and institutional processes, while addressing discriminatory practices, gender stereotypes and structural inequalities that may affect the administration of justice⁸.

3. Gender bias and legal asymmetry in selected Indian statutes

Certain statutory provisions create legal asymmetries by defining the victim, offender, beneficiary, or complainant predominantly based on gender. While such differentiation may constitute legitimate protective discrimination in some circumstances, it may also reinforce gender stereotypes or result in inadequate legal recognition of comparable harms experienced by men. Therefore, the selected statutes are examined to determine whether their gender-based classifications remain constitutionally justified and consistent with the principles of formal equality, substantive equality, and gender justice.

3.1 Bharatiya Nyaya Sanhita, 2023 (BNS, 2023)

3.1(a) Section 63 of BNS, 2023: Rape

Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) defines rape through a gender-specific framework. The provision begins with the formulation that “a man is said to commit rape”, while the circumstances described in the provision contemplate a woman as the victim. Consequently, the statutory definition primarily constructs rape as an offence committed by a

⁷ Sandra Fredman, Substantive equality revisited, *International Journal of Constitutional Law*, Volume 14, Issue 3, July 2016, Pages 712–738, <https://doi.org/10.1093/icon/mow043>

⁸ V. S. Elizabeth. (2004). GENDER JUSTICE IN THE CONSTITUTION OF INDIA. *Journal of Dharma*, 29(2), 209–220. Retrieved from <https://dvkjournals.in/index.php/jd/article/view/741>

man against a woman⁹.

From the perspective of gender equality and legal asymmetry, this creates a significant area for examination. The provision provides specific statutory recognition to women as victims of rape, whereas an adult male subjected to comparable non-consensual sexual acts does not receive an equivalent offence classification under Section 63. This raises the question of whether the gender-based distinction is justified by the nature of the harm or whether it reflects traditional gender stereotypes that conceptualise women predominantly as victims and men predominantly as perpetrators.

The issue is therefore not simply whether Section 63 is gender-specific, but whether such classification satisfies the requirements of substantive equality. A substantive-equality analysis requires consideration of whether persons experiencing comparable sexual harm should receive comparable legal protection, while also recognising the historical and structural vulnerabilities that justify special protection for women.

3.1(b) Section 67 of BNS, 2023: Sexual Intercourse by Husband Upon His Wife During Separation

Section 67 of the Bharatiya Nyaya Sanhita, 2023 (BNS) criminalises sexual intercourse by a husband with his wife when she is living separately, whether under a decree of separation or otherwise, without her consent. The provision prescribes imprisonment of not less than two years and up to seven years, along with a fine¹⁰.

From the perspective of gender bias and legal asymmetry, Section 67 is significant because the statutory protection is specifically structured around the wife as the victim and the husband as the offender. The provision therefore recognises the absence of consent within a separated marriage as a criminal wrong, but does not create a corresponding gender-neutral offence where the parties are reversed. This raises an important question of legal asymmetry: whether the underlying harm of non-consensual sexual intercourse during marital separation is sufficiently dependent upon the gender of the victim and perpetrator to justify a gender-specific criminal provision.

⁹ THE BHARATIYA NYAYA SANHITA, 2023

¹⁰ THE BHARATIYA NYAYA SANHITA, 2023

The provision can also be examined through the lens of gender stereotypes. The traditional legal assumption that women are the vulnerable party in marital sexual relationships and men are the potential perpetrators may justify special protection for women in light of existing social and structural inequalities. At the same time, a substantive-equality approach requires examination of whether the law adequately recognises sexual autonomy and vulnerability irrespective of gender. The issue, therefore, is not merely whether Section 67 protects women, but whether the gender-specific formulation excludes comparable situations involving male victims.

3.1(c) Sections 74–79 of BNS, 2023: Gender-Specific Offences Against Women

Sections 74 to 79 of the Bharatiya Nyaya Sanhita, 2023 form part of the provisions dealing with offences against women and create several gender-specific criminal offences. These include assault or use of criminal force against a woman with intent to outrage her modesty (Section 74), sexual harassment (Section 75), assault or use of criminal force with intent to disrobe a woman (Section 76), voyeurism (Section 77), stalking (Section 78), and words, gestures or acts intended to insult the modesty of a woman (Section 79). Several of these provisions expressly identify women as the protected victims, while some also specify a man as the offender. For example, Section 78 defines stalking as conduct by “any man” directed against “a woman,” while Section 79 criminalises conduct intended to insult the modesty of “any woman.”¹¹

The law therefore creates a differentiated legal framework in which the same or comparable conduct may not necessarily attract the same offence classification when the victim is a man. This raises the question whether the gender-specific classification is based on the particular vulnerability of women or whether it also reflects traditional assumptions of women as victims and men as perpetrators.

However, the existence of a gender-specific provision should not automatically be equated with unconstitutional discrimination. These provisions may be justified as protective discrimination designed to address forms of violence and harassment that have historically and disproportionately affected women. The relevant question for substantive equality is therefore

¹¹ THE BHARATIYA NYAYA SANHITA, 2023

whether the gender classification has a legitimate objective and a rational and constitutionally sustainable relationship with that objective.

3.1(d) Section 80 of BNS, 2023: Dowry Death

Section 80 of the Bharatiya Nyaya Sanhita, 2023 (BNS) specifically defines “dowry death” in relation to the death of a woman. Under Section 80(1), where the death of a woman is caused by burns or bodily injury, or occurs otherwise than under normal circumstances within seven years of her marriage, and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or his relative in connection with a demand for dowry, such death is treated as a dowry death. The husband or relative concerned is deemed to have caused the death and is punishable with imprisonment of not less than seven years, which may extend to imprisonment for life¹².

From the perspective of gender bias and legal asymmetry, Section 80 is significant because the statutory offence is expressly constructed around the female victim and the husband or his relatives as the potential perpetrators. Consequently, the provision does not create an equivalent offence where a husband dies in circumstances involving dowry-related cruelty or harassment by his wife or her relatives. The gender classification therefore reflects a particular understanding of dowry-related violence as a form of harm predominantly experienced by women within marriage.

The provision therefore raises an important question: should the legal characterisation of a dowry-related death depend upon the gender of the deceased, or should the law primarily focus on the nature of the conduct, the dowry-related demand, the resulting harm, and the relationship between the parties? This does not necessarily mean that the protection afforded to women should be removed; rather, it invites an examination of whether comparable harms involving male victims require some form of legal recognition.

3.2 Protection of Women from Domestic Violence Act, 2005 – Sections 2(a) and 2(q)

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) adopts a gender-specific framework by defining the person entitled to seek protection under the Act as a woman. Section 2(a) defines an “aggrieved person” as a woman who is, or has been, in a domestic

¹² Ibid

relationship with the respondent and alleges that she has been subjected to any act of domestic violence. Section 2(q), in its original form, defined the “respondent” principally as an adult male person who is, or has been, in a domestic relationship with the aggrieved person, while its proviso permitted a complaint to be made against a female relative of the husband or male partner in specified circumstances¹³.

This structure is significant from the perspective of gender bias and legal asymmetry because the Act originally constructed domestic violence protection around a particular gender configuration: woman as the protected victim and man as the principal respondent. Consequently, a man subjected to comparable domestic violence does not fall within the definition of an “aggrieved person” under the Act. The legislation therefore creates an important distinction between the experience of domestic violence and the gender-based availability of the statutory remedy.

The gender-specific formulation of Section 2(q) has also been subject to judicial scrutiny. In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016), the Supreme Court held that the words “adult male” in Section 2(q) were unconstitutional and struck them down. The Court thereby expanded the scope of persons who could be respondents under the Act, including female relatives, while retaining the statutory definition of the “aggrieved person” as a woman. This distinction is important: the respondent category became gender-neutral, but the protected victim under Section 2(a) remained woman-specific¹⁴.

Accordingly, the present legal position should not be described simply as “adult male respondent versus woman victim.” The more precise issue is that Section 2(a) continues to make women the beneficiaries of the statutory protection, whereas Section 2(q), following judicial intervention, is no longer confined to adult male respondents.

3.3 Sexual Harassment of Women at Workplace Act, 2013 – Section 2(a)

Section 2(a) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines an “aggrieved woman” as a woman, of any age, whether employed or not, who alleges that she has been subjected to sexual harassment at the

¹³ Protection of Women from Domestic Violence Act, 2005

¹⁴ *Hiral P. Harsora and Ors. Vs. Respondent: Kusum Narottamdas Harsora and Ors*, MANU/SC/1269/2016.

workplace. The statutory definition therefore makes womanhood a condition for invoking the specialised protection and redressal mechanism provided under the Act¹⁵.

From the perspective of gender bias and legal asymmetry, Section 2(a) is significant because the Act is specifically designed around the protection of women from workplace sexual harassment. Consequently, a man subjected to comparable sexual harassment at the workplace does not fall within the definition of an “aggrieved woman” and cannot invoke the Act's specialised statutory mechanism in the same manner. The asymmetry therefore operates at the level of access to the statutory remedy, rather than merely in the description of the prohibited conduct.

From the perspective of substantive equality, the provision raises the question of whether protection from sexual harassment should depend upon the gender of the person subjected to the conduct or upon the nature of the conduct, absence of consent, workplace context and resulting harm.

Accordingly, the issue for this research is not whether specialised protection for women is necessary, but whether exclusive statutory recognition of women as victims remains justified when comparable workplace sexual harassment may also be experienced by men.

3.4 Hindu Adoptions and Maintenance Act, 1956 – Section 18: Right of a Hindu Wife to Maintenance

Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (HAMA) expressly recognises the statutory right of a Hindu wife to be maintained by her husband during her lifetime, subject to the conditions prescribed under the Act. Section 18(1) establishes this right, while Section 18(2) permits the wife to live separately from her husband without forfeiting her claim to maintenance where specified circumstances exist, including desertion, cruelty, the husband having another wife living, conversion, or other justifying circumstances¹⁶.

Section 18 is significant because the statutory right is expressly framed as a wife's claim against her husband. The provision does not create a corresponding statutory right for a Hindu husband

¹⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

¹⁶ Hindu Adoptions and Maintenance Act, 1956

to claim maintenance from his wife under Section 18 where the husband is economically dependent on the wife.

If the law presumes that the wife requires protection while the husband is economically capable of providing maintenance, it may fail to account for changing economic and social circumstances within contemporary marriages which may involve dual-income households, economically dependent husbands, or situations in which the wife is the principal earning spouse.

4. Comparative analysis of India, U.S., U.K., Canada and Australia legal frameworks

4.1: Provision for Rape in other countries

4.1 (a) United States: Gender-Neutral Conception

The United States presents a more complex model because criminal law is substantially divided between federal and state jurisdictions. Federal law uses gender-neutral language in its sexual-abuse provisions. For example, 18 U.S.C. §2242 criminalises causing “another person” to engage in a sexual act through specified forms of coercion, incapacity, or without that person's consent. Similarly, §2241 applies to sexual acts involving “another person”¹⁷

4.1 (b) United Kingdom: Sexual Offences Act 2003

Section 1 of the Sexual Offences Act 2003 defines rape through the categories “A” and “B.” A person A commits rape where A intentionally penetrates the vagina, anus or mouth of another person B with his penis, B does not consent, and A does not reasonably believe that B consents¹⁸.

The UK model is therefore gender-neutral as to the victim, but rape remains anatomically specific because the statutory offence requires penile penetration. Where other forms of non-consensual penetration occur, the Act provides separate offences, including assault by penetration under Section 2.

The Act also adopts an express statutory concept of consent. Section 74 provides that a person

¹⁷ 18 U.S. Code § 2242 - Sexual abuse

¹⁸ Sexual Offences Act 2003 of U.K

consents where they agree by choice and have the freedom and capacity to make that choice. This represents an important shift from a victim-gender approach towards a conduct-and-consent approach.

4.1 (c) Canada: Sexual Assault Framework

Canada provides a particularly clear example of gender-neutral statutory drafting. Section 271 of the Criminal Code provides that “Everyone who commits a sexual assault” is guilty of the offence. The provision does not restrict either the offender or complainant according to sex ¹⁹.

Canada consequently uses the broader concept of sexual assault, with the law focusing on the prohibited sexual conduct rather than constructing the offence around a female victim and male perpetrator. This is particularly relevant to substantive equality because the legal protection is framed around the nature of the harm and the absence of legally valid consent, rather than the gender identity of the persons involved.

4.1 (d) Australia: New South Wales

Australia provides a further example of a gender-neutral approach. In New South Wales, Section 61I of the Crimes Act 1900 provides that “Any person” who has sexual intercourse with “another person” without the other person's consent, while knowing that the other person does not consent, commits sexual assault. Gender is not used to define the victim or offender. This allows the criminal law to recognise sexual assault as a harm that may occur irrespective of the gender of the parties ²⁰.

4.2 Provisions for Sexual Intercourse by Husband Upon His Wife During Separation in Other Countries

4.2 (a) United States: Marital Sexual Assault

The United States does not have one comprehensive national criminal definition governing all marital sexual offences because criminal law is principally administered through the states. The federal criminal provisions apply only within specified federal jurisdictions and circumstances.

¹⁹ Criminal Code (R.S.C., 1985, c. C-46)

²⁰ CRIMES ACT 1900 - SECT 61I of New South Wales

At the federal level, 18 U.S.C. §2242 criminalises specified forms of sexual abuse, including knowingly engaging in a sexual act with another person without that person's consent, including through coercion. The provision uses gender-neutral language such as “another person.”²¹

Marital status therefore does not function as a general federal rule establishing a husband's or wife's entitlement to sexual access. At the state level, marital rape has been criminalised throughout the United States, although the precise definitions, evidentiary rules and penalties vary.

4.2 (b) Canada: Criminal Code

Canada provides an especially strong contrast with Section 67 BNS. The Canadian Criminal Code permits a husband or wife to be charged with sexual assault against the other spouse, irrespective of whether they were living together when the conduct occurred. Section 278 expressly states that a husband or wife may be charged under Sections 271–273 in respect of the other spouse, whether or not the spouses were living together²².

4.2 (c) Australia: Consent-Based Marital Sexual Offences

Australia is a federal system in which the states and territories have primary responsibility for sexual-offence legislation and the legal definition of consent.

Australian legal frameworks generally recognise that consent is required irrespective of the relationship between the parties. The Australian Institute of Health and Welfare states that consent is required regardless of a person's relationship with another person and that being in a relationship does not eliminate the requirement for consent²³.

4.3 Provisions for Gender-Specific Offences Against Women in other countries

4.3 (a): Provisions in United States

Voyeurism: 18 U.S.C. §1801, the federal Video Voyeurism provision, criminalises intentionally capturing an image of the private area of an “individual” without consent where

²¹ 18 U.S. Code § 2242 - Sexual abuse

²² Criminal Code (R.S.C., 1985, c. C-46)

²³ https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/consent?utm_source

there is a reasonable expectation of privacy. The provision does not define the victim as a woman²⁴. This differs conceptually from a statute framed exclusively around female victims because the protected interest is individual privacy, rather than female modesty.

Stalking: Federal stalking legislation under 18 U.S.C. §2261A similarly refers to conduct directed against “another person.” It covers conduct intended to kill, injure, harass, intimidate or place another person under surveillance, where the conduct causes specified fear or substantial emotional distress²⁵.

4.3 (b): Provisions in the United Kingdom

Voyeurism: Section 67 of the Sexual Offences Act 2003 criminalises voyeurism where a person observes another person undertaking a private act for sexual gratification, knowing that the other person does not consent. The statutory formulation refers to “another person” rather than restricting the victim to women²⁶.

4.3 (c): Provisions in Canada

Voyeurism: Section 162 of Canada's Criminal Code criminalises the surreptitious observation or visual recording of a person in circumstances giving rise to a reasonable expectation of privacy. It includes situations involving nudity, exposure of sexual organs or explicit sexual activity²⁷. The offence is therefore framed around the violation of privacy and autonomy, rather than the victim's gender.

Criminal harassment / stalking: Section 264 of the Criminal Code uses the expression “another person” and criminalises conduct such as repeatedly following, monitoring, communicating with, watching or engaging in threatening conduct where the conduct could reasonably cause the person to believe that their safety is threatened²⁸.

4.3 (d): Provisions in Australia

Voyeurism: Section 91J of the Crimes Act 1900 (NSW) creates a voyeurism offence where “a

²⁴ 18 U.S. Code § 1801 - Video voyeurism

²⁵ 18 U.S. Code § 2261A – Stalking

²⁶ Sexual Offences Act 2003 of U.K

²⁷ Criminal Code (R.S.C., 1985, c. C-46)

²⁸ Criminal Code (R.S.C., 1985, c. C-46)

person” observes another person engaged in a private act, for sexual arousal or gratification, without that person's consent and knowing that the person does not consent. The law is centred on privacy, consent and the prohibited conduct, rather than on a female-victim classification²⁹.

4.4 Provisions of Protection of Women from Domestic Violence in other countries

4.4 (a) Provisions in United Kingdom

The **Domestic Abuse Act 2021** provides a particularly clear gender-neutral statutory definition. Section 1 provides that behaviour by one person “A” towards another person “B” constitutes domestic abuse where the persons are personally connected and the behaviour is abusive. The definition expressly includes physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse; and psychological, emotional or other abuse³⁰.

4.4 (b) Provisions in Canada

Canada similarly approaches domestic and intimate-partner violence through a combination of Criminal Code provisions and other legal mechanisms, rather than a women-only statutory victim category. The Canadian framework has also recently developed in the direction of recognising coercive and controlling conduct against intimate partners.

The Protecting Victims Act, 2026, for example, introduced a Criminal Code offence applying to “Everyone” who engages in a qualifying pattern of coercive or controlling conduct towards an intimate partner. The provision covers conduct involving violence, sexual coercion, monitoring, financial control and other behaviour that may cause an intimate partner to believe their safety is threatened³¹.

4.4 (c) Provisions in Australia

Under Section 4AB of the Family Law Act 1975 (Cth), family violence includes violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes that family member to be fearful. The Australian Attorney-General's

²⁹ CRIMES ACT 1900 - SECT 61I of New South Wales

³⁰ Domestic Abuse Act 2021 of United Kingdom

³¹ Protecting Victims Act (S.C. 2026, c. 19) of Canada

Department accordingly describes family violence in terms of the conduct and its effect upon the family member rather than the sex of the victim³².

5. Suggestions for Gender-Inclusive Legal and Policy Reforms for Substantive Equality

5.1 Reframe gender-specific offences around the nature of harm

Indian criminal law should progressively reconsider provisions that define offences primarily by reference to the gender of the victim or offender and, wherever constitutionally and practically appropriate, move towards classifications based on the nature of the conduct, absence of consent, coercion, vulnerability and resulting harm. This approach would be particularly relevant to sexual offences where the existing statutory framework may not adequately recognise comparable sexual victimisation of men. The objective should not be to remove special protection available to women, but to ensure that comparable violations of bodily autonomy and dignity are not excluded from legal recognition merely because the victim belongs to another gender. Such reform would strengthen substantive equality by shifting the emphasis from the identity of the victim to the nature and seriousness of the harm. Comparative scholarship on gender-neutral sexual offences similarly identifies the limitations of gender-asymmetric approaches and supports greater emphasis on consent and the conduct constituting the offence³³.

5.2 Developing a Gender-Inclusive Domestic Violence Framework

The Protection of Women from Domestic Violence Act, 2005 should be reconsidered from the perspective of vulnerability and the nature of domestic abuse, without undermining the special protection historically required by women. The existing framework could be supplemented by a gender-inclusive mechanism recognising physical, sexual, psychological, emotional, economic and coercive forms of domestic abuse experienced by persons irrespective of gender. Such a reform would enable the law to distinguish between legitimate gender-specific protection and situations where comparable harm is capable of occurring across genders. The objective should therefore be to ensure that access to protection orders, residence remedies, compensation, counselling and other protective mechanisms is determined, where appropriate,

³² Section 4AB of the Family Law Act 1975 (Cth) of Australia

³³ Gupta, D., Gupta, M. (2026). Gender-Neutral Laws in India Regarding Sexual Offences. *International Journal of Law Management & Humanities*, 9(IV), 202-213. <https://ijlmh.com/article/view/gender-neutral-laws-in-india-regarding-sexual-offences>

by the nature of the harm and the vulnerability of the affected person rather than by gender alone. This approach is consistent with the broader principle of gender mainstreaming, under which the implications of legislation for both women and men are considered during the design, implementation and evaluation of legal and policy measures ³⁴.

5.3 Making Workplace Sexual-Harassment Protection Gender-Inclusive

The Sexual Harassment of Women at Workplace Act, 2013 may be reconsidered to provide an effective statutory mechanism for all persons subjected to sexual harassment at the workplace, while retaining gender-sensitive safeguards for women where evidence demonstrates particular vulnerability. The present woman-specific framework could be supplemented by a broader complaint mechanism under which a person subjected to sexual harassment is entitled to approach the competent institutional body irrespective of sex. This would prevent the legal system from reproducing the assumption that women are necessarily victims and men are necessarily perpetrators. The reform would not require identical institutional treatment in every circumstance; rather, it would establish a common minimum standard of protection while permitting additional safeguards where substantive equality requires them. Such an approach would be consistent with the broader understanding that gender equality requires consideration of the rights, needs and experiences of both women and men ³⁵.

5.4 Reforming Maintenance Laws based on Economic Dependency

Gender-specific maintenance provisions should increasingly incorporate actual economic dependency and vulnerability as important determinants of entitlement. Rather than relying exclusively upon traditional assumptions that the wife is economically dependent and the husband is economically capable of providing support, maintenance law could take into account factors such as income, earning capacity, disability, age, caregiving responsibilities, contribution to the household, duration of marriage and post-separation economic circumstances. Such a framework would not necessarily require identical maintenance outcomes for men and women, because substantive equality permits differential treatment

³⁴ AVNI BHATIA, GENDER DISCRIMINATION IN INDIAN LAW: A CRITICAL ANALYSIS OF LEGAL PROTECTIONS FOR MEN, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (14) OF 2025, PG. 458-468, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/OFKC4097>

³⁵ Sharma, Khushi, Reassessing the POSH Framework: The Case for Gender-Neutral Workplace Sexual Harassment Law in India (April 17, 2026). Available at SSRN: <https://ssrn.com/abstract=6597898> or <http://dx.doi.org/10.2139/ssrn.6597898>

where actual circumstances differ. However, it would ensure that gender does not become an automatic substitute for an assessment of economic vulnerability. This would represent a movement from status-based entitlement towards need-based and vulnerability-sensitive protection, thereby strengthening the substantive equality dimension of family law³⁶.

5.5 Introducing Gender Equality Impact Assessment for New Legislation

India should consider institutionalising a Gender Equality Impact Assessment for proposed legislation, particularly where a Bill creates gender-specific rights, obligations, offences, presumptions or remedies. Before enactment, the legislative process should assess how the proposed provision may affect women and men, whether the classification is based upon demonstrable vulnerability, whether comparable harm experienced by another gender is excluded, and whether the proposed classification may unintentionally reinforce gender stereotypes. Such assessment could form part of the legislative statement of objects and reasons or a separate constitutional and gender-impact memorandum accompanying the Bill. This would shift gender equality analysis from being predominantly a matter of post-enactment judicial review to also becoming an element of ex ante legislative scrutiny. UN Women expressly identifies gender mainstreaming as the assessment of the implications of planned legislation and policies for women and men, to prevent inequality from being perpetuated³⁷.

5.6 Eliminating Gender Stereotypes from Legal and Policy Frameworks

Legislative drafting, judicial interpretation and administrative implementation should avoid stereotypical assumptions concerning the roles and vulnerabilities of men and women. Particular attention should be given to assumptions that women are inherently vulnerable, emotionally dependent or necessarily victims, while men are inherently strong, economically independent or necessarily perpetrators. Such assumptions may create a form of legal invisibility of male vulnerability and may simultaneously restrict women by reinforcing traditional understandings of femininity. The Supreme Court's Handbook on Combating Gender Stereotypes demonstrates the importance of identifying and eliminating gender stereotypes from legal reasoning and judicial language. A gender-inclusive legal framework

³⁶ S, Ragha Sudhan, Gender Bias and Maintenance Laws in India (January 2, 2023). Available at SSRN: <https://ssrn.com/abstract=4316231> or <http://dx.doi.org/10.2139/ssrn.4316231>

³⁷ Madsen, D. H., & Agustín, L. R. (2018). Gender Mainstreaming in the Danish Central Administration: (Mis)understandings of the Gendered Impact of Law Proposals. *Kvinder, Køn & Forskning*, 26(4), 38–49. <https://doi.org/10.7146/kkf.v26i4.110557>

should therefore recognise vulnerability as a factual and contextual condition rather than as an inevitable consequence of biological sex³⁸.

5.7 Establishing Periodic Review of Gender-Asymmetric Laws

Gender-specific legislation should be subjected to periodic legislative and empirical review to determine whether the circumstances that originally justified the classification continue to exist in the same form. A law enacted to address a particular historical form of discrimination or vulnerability should not necessarily be presumed to require identical statutory treatment indefinitely. Periodic review should consider developments in constitutional jurisprudence, social conditions, patterns of victimisation, implementation data, access to remedies and the emergence of comparable forms of harm affecting other genders. Such a mechanism would introduce the principle of continuing constitutional justification, under which gender-based classifications remain valid only so long as their underlying rationale continues to be demonstrable. This would help reconcile protective discrimination with the dynamic nature of substantive equality³⁹.

6. Conclusion

The State should strengthen the collection and publication of reliable gender-disaggregated data relating to domestic violence, sexual offences, workplace harassment, stalking, psychological abuse, economic abuse and other forms of victimisation. The absence of sufficient data concerning male victims should not automatically be interpreted as evidence that such victimisation is insignificant, particularly where social stigma, under-reporting or the absence of appropriate legal mechanisms may discourage complaints. Comprehensive data collection would enable legislators and courts to distinguish between areas where women continue to face disproportionate vulnerability and areas where comparable forms of harm require gender-inclusive legal recognition. Such an evidence-based approach would strengthen the legitimacy of gender classifications and reduce the possibility of legislation being based primarily upon social assumptions or stereotypes. UN Women also identifies data and monitoring as important components of assessing whether legal frameworks are effectively

³⁸ Handbook on Combating Gender Stereotypes (Supreme court of India)

³⁹ Gender sensitive parliaments and the legislative cycle: conceptualising new cultures and practices.
<https://doi.org/10.1080/20508840.2022.2147760>

promoting equality and non-discrimination

The central reform principle emerging from this research should be that gender-specific protection should be retained where demonstrable historical or structural disadvantage justifies differential treatment, while gender-inclusive protection should be introduced where the underlying harm is capable of affecting persons across genders. This approach avoids both the wholesale rejection of women-centric legislation and the assumption that every gender-specific classification is automatically constitutionally justified. The appropriate approach is therefore to examine the purpose of the law, the nature of the vulnerability, the evidence supporting the classification, the effect of the provision on different genders and the availability of alternative legal mechanisms. Substantive equality should consequently be understood not as identical treatment in every circumstance, but as a framework that seeks to redress disadvantage, address stereotyping and ensure meaningful access to legal protection. This multidimensional understanding of substantive equality is consistent with contemporary equality theory and international approaches to gender-responsive law-making.