

---

# REIMAGINING JUSTICE: A CRITICAL ANALYSIS OF THE NEED FOR GENDER-NEUTRAL LAWS IN INDIA

---

Anishka Pandey, University of Lucknow

## ABSTRACT

This critical analysis examines the imperative need for gender-neutral laws in India, highlighting the inherent biases and inadequacies of the existing legal framework. Employing a mixed-methodology approach, combining both empirical and analytical research, this study investigates the limitations of the Indian Penal Code<sup>1</sup>, anti-dowry laws<sup>2</sup>, the POSH Act<sup>3</sup>, and the Protection of Women from Domestic Violence Act<sup>4</sup>. A survey conducted through Google Forms, analyzing responses from over [25] participants, supplements the critical analysis. Case studies of Sweden and Canada provide comparative insights into the implementation of gender-neutral laws. This research argues that inclusive language and definitions are essential for promoting justice and equality. The findings underscore the urgency for gender-neutral laws in India, emphasizing the need to address the inadequate representation of marginalized groups, lack of protection for victims of gender-based violence, and the overall biasness of the Indian legal system. Ultimately, this study contends that re-imagining justice in India necessitates a paradigm shift towards gender-neutral laws, ensuring equal rights and protection for all individuals, regardless of their gender identity or expression.

**Keywords:** Gender-Neutral Laws, Indian Legal Framework, Critical Analysis, Justice, Equality, Inclusive Legislation

---

<sup>1</sup> The Indian Penal Code 1860

<sup>2</sup> Dowry Prohibition Act 1961

<sup>3</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>4</sup> The Protection of Women from Domestic Violence Act 2005

## Introduction

The Indian legal system, founded on justice, equality, and fairness principles, has made significant strides in promoting gender justice. However, despite these efforts, the system remains plagued by inherent biases and limitations. The existing laws, largely designed to protect women, have created a void in the protection and support offered to men, who are increasingly facing various forms of violence, harassment, and discrimination.

Articles 14<sup>5</sup>, 15<sup>6</sup>, and 21<sup>7</sup> of the Indian Constitution guarantee equality and protection of rights irrespective of gender. Yet, existing laws and policies often perpetuate gender-based biases and discrimination. Gender-neutral laws are essential in addressing this imbalance, recognizing that gender-based violence and discrimination can affect anyone.

Gender-neutral laws, which aim to provide equal protection and support to all individuals regardless of their gender, are essential in addressing this imbalance. The term neutral means impartial or unbiased state of person or things, not being prejudiced, engaged or being aligned towards either or any of the sides. The status of being neutral is not going towards any of the extremes or in straitjackets which is marking or setting up labels, neither being in support or being against on any basis. Seeing things as is, without any preferences or favours. Gender neutrality or Gender Neutralism signifies an idea or a concept that the policies, rules, regulations, language, social institutions must avoid differentiating roles and positions according to people's sex or gender. A policy, programme, situation or a conduct must not have differential positive or negative impact on gender. Objective of gender neutrality is to eliminate gender distinction or bias and gender inequalities prevalent in society.<sup>8</sup>

In India, the lack of gender-neutral laws has resulted in a significant gap in the protection offered to men. While women are protected under various laws, such as DV Act<sup>9</sup> and the POSH Act<sup>10</sup>, men have no similar protections. This disparity is evident in the handling of cases like the Nirbhaya case<sup>11</sup> (2012) and the Mathura rape case (1972)<sup>12</sup>, which highlighted the need for

---

<sup>5</sup> The Constitution of India 1949, s.14

<sup>6</sup> Ibid, s.15

<sup>7</sup> Ibid, s.21

<sup>8</sup> Astha Srivastava, 'THE NEED FOR GENDER NEUTRAL LAWS IN INDIA' (2025) lawfullegal THE NEED FOR GENDER NEUTRAL LAWS IN INDIA » Lawful Legal (March 26, 2025)

<sup>9</sup> Supra Note 4

<sup>10</sup> Supra Note 3

<sup>11</sup> Mukesh v. State of NCT, (2013) 2 SCC 587

<sup>12</sup> Tuka Ram And Anr vs State Of Maharashtra, 1979 AIR 185

stronger laws to protect women. However, cases like the Atul Subhash case (2024) which involved men as victims of domestic violence and false rape accusations, respectively, demonstrate the need for gender-neutral laws that protect all individuals

## **Legal Framework**

### **Indian Constitution:**

Provisions related to Equality and Non-Discrimination:

**Article 14<sup>13</sup>:** Equality before the law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**Article 15<sup>14</sup>:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth - The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

**Article 21<sup>15</sup>:** Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **Analysis of Existing Laws and their Gender Biasness:**

**Indian Penal Code (IPC):** India's anti-rape laws, as defined by the Indian Penal Code (IPC), have been criticized for being gender-biased. According to:

**Section 375<sup>16</sup>:** Rape is defined as an act committed by a man against a woman, implying that only women can be victims and only men can be perpetrators.

**Section 377<sup>17</sup>:** While this section acknowledges that men can be victims of rape, it still requires the perpetrator to be a man.

---

<sup>13</sup> Supra Note 5

<sup>14</sup> Supra Note 6

<sup>15</sup> Supra Note 7

<sup>16</sup> Supra Note 1, s. 375

<sup>17</sup> Ibid, s. 377

**Section 354<sup>18</sup>:** This section deals with assault or criminal force with intent to outrage a woman's modesty, reinforcing the notion that only women's modesty needs protection.

*The National Crime Records Bureau (NCRB<sup>19</sup>) report states that the acquittal rate in rape cases is increasing, with approximately 75% of registered rape cases resulting in the accused being declared innocent.*

**Anti-dowry law :** the *Dowry Prohibition Act of 1961<sup>20</sup>* was a pioneering legislation. Later, **Section 498A of the Indian Penal Code (IPC)** was introduced to safeguard women from harassment and cruelty inflicted by their in-laws.

Supporting this, the *Indian Evidence Act (Section 113B)* and *IPC (Section 304B)* presume that if a woman commits suicide within *seven years of marriage*, also known as DOWRY DEATH, it is due to harassment by her husband or in-laws, and is considered a culpable death. However, there is no corresponding provision for men, highlighting a glaring disparity in the law.

**POSH Act (Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013)<sup>21</sup>:** This Act aims to prevent and address sexual harassment of women at the workplace. However, it has been criticized for not providing adequate protection to male victims of sexual harassment.

**Protection of Women from Domestic Violence Act, 2005<sup>22</sup>:** This Act aims to provide protection to women from domestic violence. However, it has been criticized for not providing adequate protection to male victims of domestic violence.

Regarding child custody laws, **the Guardians and Wards Act, 1890**, and **the Hindu Minority and Guardianship Act, 1956**, govern child custody and guardianship in India. While these laws aim to protect the best interests of the child, they have been criticized for being biased towards mothers in custody disputes.

---

<sup>18</sup> Ibid, s. 354

<sup>19</sup> The National Crime Records Bureau

<sup>20</sup> Supra Note 2

<sup>21</sup> Supra Note 3

<sup>22</sup> Supra Note 4

## **Issues**

### **Inadequate Representation of Marginalized Groups in the Legal System:**

The legal system in India has been criticized for its inadequate representation of marginalized groups, including:

**LGBTQ+ individuals:** Lesbian, Gay, Bisexual, Transgender, Queer/Questioning individuals who face discrimination and exclusion due to their sexual orientation or gender identity.

**Women:** Particularly those from rural areas, low-income backgrounds, and minority communities who face barriers in accessing justice.

**Transgender individuals:** Those who identify with a gender different from the one assigned at birth, who face significant challenges in accessing justice due to lack of recognition of their gender identity.

### **This inadequate representation leads to:**

**Lack of understanding:** Judges, lawyers, and law enforcement officials may lack understanding of the specific challenges faced by marginalized groups.

**Biased decision-making:** Decisions may be influenced by biases and stereotypes, leading to unfair outcomes.

**Inaccessible justice:** Marginalized groups may face barriers in accessing justice, including lack of access to legal aid, language barriers, and cultural insensitivity.

### **Lack of Protection for Victims of Gender-Based Violence:**

Gender-based violence refers to violence that is directed at individuals or groups based on their gender, including:

**Domestic violence:** Physical, emotional, or economic abuse within intimate relationships.

**Sexual violence:** Rape, molestation, and other forms of sexual assault.

**Acid attacks:** Violent attacks using acid or other corrosive substances.

**The legal system in India has been criticized for its lack of protection for victims of gender-based violence, including:**

**Inadequate laws:** Laws may be inadequate or poorly enforced, leading to lack of accountability for perpetrators.

**Lack of support services:** Victims may lack access to support services, including counseling, medical care, and legal aid.

**Societal attitudes:** Societal attitudes may perpetuate victim-blaming and stigma, leading to further trauma for victims.<sup>23</sup>

### **Examples:**

**Section 377:** Until 2018, this law criminalized same-sex relationships, leading to persecution and marginalization of LGBTQ+ individuals.

**Nirbhaya case:** The 2012 gang rape and murder of a 23-year-old woman in Delhi highlighted the need for stronger laws and more effective implementation to protect victims of gender-based violence.<sup>24</sup>

### **Argument**

#### **Need for Inclusive Language and Definitions:**

Traditional laws have often been criticized for their exclusive language and definitions, which can perpetuate discrimination and marginalization. For instance:

**Kidnapping laws:** Earlier, the law only referred to the kidnapping of a "*girl child*" (*Section 361 of the Indian Penal Code*). However, this has been amended to include the kidnapping of any "*child*" (*Section 361 of the IPC*), making the law more inclusive.

---

<sup>23</sup> Shweta Kabra, 'GENDER NEUTRAL LAWS - HOW NEEDFUL IN INDIA ?' Manupatra, <http://docs.manupatra.in/newsline/articles/Upload/3FE150D0-E784-49BD-8328-4134C0E87955.pdf> 10 April 2025

<sup>24</sup> Supra Note 11

**Gender-neutral laws can promote equality and reduce violence by:**

**Recognizing diverse identities:** Gender-neutral laws acknowledge the existence of diverse gender identities and expressions, reducing the marginalization of LGBTQ+ individuals.

**Addressing intersectionality:** Gender-neutral laws can address the intersectionality of discrimination, recognizing that individuals may face multiple forms of discrimination.

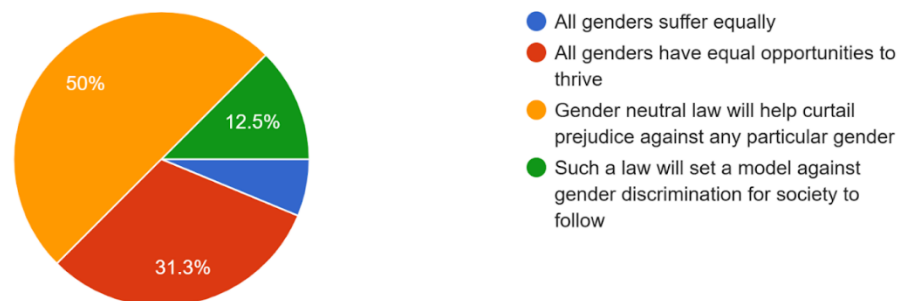
**Promoting inclusivity:** Gender-neutral laws promote inclusivity by recognizing the experiences and challenges faced by individuals across the gender spectrum.<sup>25</sup>

**Survey on Gender-Neutral Laws in India**

A survey was conducted via Google Forms to gather insights on perceptions and attitudes towards gender-neutral laws in India. [Copy of Gender-neutral laws in India \(Responses\)](#)

Why do you think India needs a gender-neutral laws?

16 responses

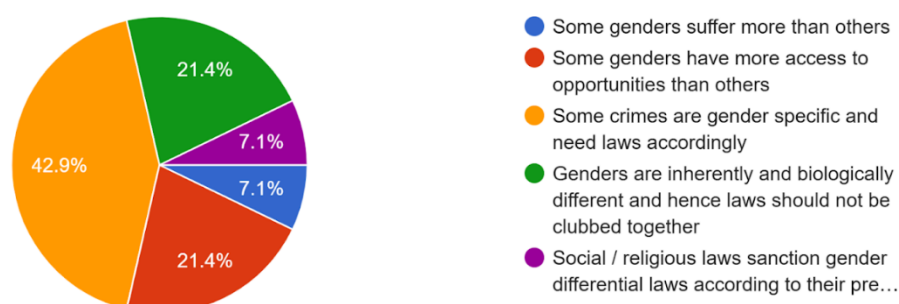


---

<sup>25</sup> Supra Note 23

Why do you think India does not need a gender-neutral laws?

14 responses



### Survey findings:

#### Demographics:

**Age group:** 56% of respondents were between 18-24 years old Gender: 52% female, 48% male.

#### Awareness and Attitudes:

48% of respondents were aware of current laws and policies related to gender laws in India 64% believed India needs gender-neutral laws, while 12% disagreed 64% agreed that the Indian Penal Code should be amended to include gender-neutral language 76% agreed that the Domestic Violence Act should be made gender-neutral

#### Confidence in Gender-Neutral Laws:

41% of respondents rated their confidence level as 3 out of 5 that gender-neutral laws would positively impact their life or others

#### Positive Discrimination Policies:

37.5% of respondents were very satisfied with positive discrimination policies (reservations) provided to specific genders.



**Reasons for Supporting Gender-Neutral Laws:**

50% believed gender-neutral laws would help curtail prejudice against any particular gender  
6.3% believed all genders suffer equally

**Reasons for Opposing Gender-Neutral Laws:**

42.9% believed some crimes are gender-specific and require laws accordingly.

**Analysis****Case studies of the successful implementation of gender-neutral laws in other countries.**

Countries like *Sweden and Canada* have set precedents in embracing gender-neutral laws.

For instance, **Sweden introduced gender-neutral parental leave policies**, recognizing the equal role of all genders in caregiving. Similarly, **Canada's Criminal Code has adopted inclusive terminology**, such as "person" instead of gender-specific nouns, to ensure broader applicability. These global examples illustrate that gender-neutral laws not only reflect societal progress but also contribute to a more equitable and just society.<sup>26</sup>

Inspired by Canada's approach, the Indian Supreme Court released a terminology book in 2023<sup>27</sup>, providing guidelines for using gender-neutral language in legal contexts. The book recommends using terms like "person" instead of "man" or "woman" to promote inclusivity and reduce gender bias.

**Examination of challenges and obstacles in implementing gender-neutral laws in India**

In India, the journey towards gender-neutral laws is fraught with challenges. The deeply entrenched patriarchal mindset, lack of awareness about non-binary genders, and societal resistance to change are significant hurdles. Moreover, the legal system itself often reflects gender biases, evident in the language used in statutes, judicial interpretations, and enforcement

---

<sup>26</sup> Rinki Yadav, 'A CASE STUDY ON GENDER NEUTRAL LAWS AND CONSTITUTION' (2023) 4(2) *granthaalayahpublication.org* <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/view/2965> 8 April 2025

<sup>27</sup> Handbook on Combating Gender Stereotypes, 2023

mechanisms. The lack of adequate representation of women and LGBTQ+ individuals in legislative processes further exacerbates the problem.

### **Challenges in Implementing Gender-Neutral Laws in India**

1. **Lack of awareness and understanding:** Limited knowledge and misconceptions about gender-neutral laws.
2. **Patriarchal society:** Deep-rooted gender roles and stereotypes resisting change.
3. **Insufficient political will:** Lack of priority and support from politicians.
4. **Limited representation of men's rights groups:** Exclusion from decision-making processes.
5. **Stereotypes and biases:** Preconceived notions against men influencing policy-making.
6. **Lack of research and data:** Limited studies and data to inform policy decisions.
7. **Resistance from women's rights groups:** Concerns about undermining women's rights.
8. **Complexity of Indian laws:** Overlapping and complex laws hindering effective implementation.<sup>28</sup>

### **Discussion of potential solutions and strategies for overcoming these challenges**

Promoting gender-neutral laws in India requires a multi-faceted approach. This includes raising awareness through workshops and seminars, such as the National Commission for Women's (NCW)<sup>29</sup> workshops for judges on gender-neutral language. Building public support is also crucial, which can be achieved through nationwide campaigns, like the All India Democratic Women's Association's (AIDWA)<sup>30</sup> campaign for gender-neutral laws. Additionally, amending existing laws, providing training programs for stakeholders, and establishing monitoring

---

<sup>28</sup> Vivechana Chauhan, 'Towards Equality: Challenges and Progress in Gender Neutrality Legislation in India' (2024) Juris Centre, <https://juriscentre.com/2024/08/30/towards-equality-challenges-and-progress-in-gender-neutrality-legislation-in-india/> (09 April, 2025)

<sup>29</sup> National Commission for Women's

<sup>30</sup> All India Democratic Women's Association's

mechanisms are necessary steps. By adopting this comprehensive approach, India can successfully promote gender-neutral laws, ensuring equality and justice for all.<sup>31</sup>

## **Addressing Challenges to Gender-Neutral Laws in India**

### **1. Lack of Awareness and Understanding**

**Legal Literacy Programs:** Educate communities about gender-neutral laws and their implications.

**Community Outreach:** Organize workshops and seminars to raise awareness about the importance of gender-neutral laws.

**Example:** The Indian government can partner with NGOs to launch nationwide awareness campaigns, similar to the "Beti Bachao, Beti Padhao" initiative.

### **2. Patriarchal Society**

**Social and Cultural Reforms:** Encourage community engagement and discussions to challenge deep-rooted gender roles and stereotypes.

**Education and Training:** Incorporate gender sensitization modules in school curricula and provide training for law enforcement officials.

**Example:** The Indian government can introduce gender sensitization courses in schools, similar to the "Life Skills Education" program.

### **3. Limited Representation of Men's Rights Groups**

**Inclusive Decision-Making:** Encourage the inclusion of men's rights groups in decision-making processes.

**Collaboration and Dialogue:** Foster dialogue between men's rights groups, women's rights

---

<sup>31</sup> Anurag Pandey, 'How Indian Laws Hate Men ? Need for Gender Neutral Laws' (2023) StudyIQ IAS [https://youtu.be/f1UwC3gG0so?si=TWurof\\_DNRj0JkaK](https://youtu.be/f1UwC3gG0so?si=TWurof_DNRj0JkaK) ( March 26, 2025 )

groups, and policymakers.

Example: The Indian government can establish a committee to address men's rights issues, comprising representatives from men's rights groups, women's rights groups, and policymakers.

#### **4. Stereotypes and Biases**

Training and Capacity Building: Provide training for law enforcement officials and policymakers to recognize and address biases.

Community Engagement: Organize community events to challenge stereotypes and promote understanding.

Example: The Indian government can introduce training programs for law enforcement officials, focusing on recognizing and addressing biases.

#### **5. Lack of Research and Data**

Research Studies: Conduct studies to gather data on the impact of gender-neutral laws.

Data-Driven Policy Making: Use data to inform policy decisions and ensure effective implementation<sup>32</sup>.

Example: The Indian government can establish a research institute to study the impact of gender-neutral laws and provide recommendations for policy reforms.

#### **6. Resistance from Women's Rights Groups**

Dialogue and Collaboration: Engage in open dialogue with women's rights groups to address concerns and find common ground.

Inclusive Policy Making: Ensure that policy decisions are inclusive and consider the perspectives of both men's and women's rights groups.

---

<sup>32</sup> Yogita Gautam, 'Breaking Barriers: The Imperative for Gender-Neutral Laws in India' (2024) 7 (2) IJLMH Page 2577 - 2593 DOI: <https://doi.org/10.10000/IJLMH.117279>

Example The Indian government can establish a joint committee with representatives from men's and women's rights groups to review and reform existing laws.

## 7.Complexity of Indian Laws

Simplification and Codification: Simplify and codify existing laws to reduce complexity and overlapping.

Effective Implementation: Ensure effective implementation of laws through training and capacity building for law enforcement officials.

Example: The Indian government can establish a law commission to review and simplify existing laws, ensuring they are accessible and easy to understand .<sup>33</sup>

## Conclusion

In conclusion, gender-neutral laws are essential for promoting justice and equality in India. By recognizing the diverse experiences and challenges faced by individuals across the gender spectrum, gender-neutral laws can help address the systemic inequalities and discrimination that persist in Indian society. India's journey towards implementing gender-neutral laws faces challenges like lack of awareness, patriarchal society, and complex laws. However, by launching awareness campaigns, simplifying laws, and including diverse perspectives in decision-making, we can overcome these hurdles. This will promote equality, justice, and inclusivity, ultimately contributing to the betterment of our country. By working together, we can create a more just and equitable society for all.

*As Justice D.Y. Chandrachud noted in the landmark **Navtej Singh Johar vs. Union of India case**<sup>34</sup>, "The Constitution protects the dignity of every individual, including those who identify as LGBTQ+."*

According to a survey conducted by **the Indian Women's Association**, 76% of respondents believed that domestic violence laws should be made gender-neutral. This highlights the need

---

<sup>33</sup> Vartika Pandey & Dr Shashank Shekhar, 'Gender Neutrality Of Indian Laws - A Myth Or Reality?.' (2024) Researchgate (PDF) Gender Neutrality Of Indian Laws - A Myth Or Reality? (10 April,2025)

<sup>34</sup> Supriyo v. Union of India, 2023 SCC OnLine SC 1348

for laws that recognize the experiences of all individuals, regardless of their gender identity or expression.

We call upon policymakers to prioritize the amendment of existing laws to make them gender-neutral, and to introduce new laws that recognize the rights and experiences of marginalized communities. We urge lawmakers to engage in informed discussions and debates about the importance of gender-neutral laws, and to work towards creating a more inclusive and equitable legal framework.

The implementation of gender-neutral laws has the potential to transform Indian society in profound ways. By promoting equality and justice, gender-neutral laws can help create a more inclusive and equitable society, where all individuals can live with dignity and respect. As noted, *Dr. B.R. Ambedkar*, “*The Constitution is a living document that adapts to the needs of its time*”.