
EQUALITY BEFORE LAW: ANALYSING THE NEED FOR GENDER-NEUTRAL LEGAL REFORMS IN LIGHT OF BHARATIYA NYAYA SANHITA 2023

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ABSTRACT

The constitutional guarantee of “equality before law and equal protection of laws” under Article 14 of the Indian Constitution forms the cornerstone of a justice system that aspires to transcend gender bias. With the replacement of the colonial-era Indian Penal Code (IPC) by the Bharatiya Nyaya Sanhita (BNS), 2023, India stood at the threshold of redefining its criminal jurisprudence to reflect modern, inclusive, and equitable values. However, despite its progressive ambitions, the BNS continues to preserve gender-specific provisions—such as Section 85 (cruelty against married women, formerly Section 498A IPC) and Section 75 (sexual harassment, formerly Section 354A IPC)—which, while designed to protect historically oppressed groups, inadvertently reinforce a gendered understanding of victimhood and culpability.

This paper critically interrogates the extent and implications of gender-specificity in the BNS through the lens of constitutional equality, human rights, and evolving judicial interpretation. It explores the challenges in implementing gender-neutral laws—ranging from societal stigma and institutional bias to the lack of recognition for male and LGBTQ+ victims—and assesses the need for multi-pronged reform. These include adopting gender-neutral terminology, redefining key provisions such as Section 63 BNS (rape), and instituting mandatory sensitization, data-driven policymaking, and awareness initiatives.

By engaging with comparative international models and constitutional jurisprudence, the study demonstrates that true gender justice requires a shift from protectionism to parity. The analysis concludes that while the BNS marks a significant legislative milestone, its selective neutrality limits the realization of India’s constitutional promise. Therefore, embracing comprehensive gender-neutral legal reform emerges as not merely a legislative aspiration but a constitutional and moral imperative toward achieving equality and justice for all.

Introduction

The Indian constitutional promise of “equality before law and equal protection of laws” under Article 14[1] represents one of the most enduring pillars of the nation’s democratic and legal philosophy. This principle envisions a system where every individual—regardless of gender, caste, religion, or identity—enjoys the same rights, protections, and responsibilities under the law. Rooted in the broader ideals of justice and fairness, it requires the State not merely to avoid discrimination but to ensure substantive equality, where the law responds equitably to the lived experiences of all citizens.

Historically, Indian criminal statutes, particularly the Indian Penal Code (IPC), 1860, were drafted in a socio-political climate shaped by patriarchal norms and colonial attitudes. These laws, while offering much-needed protection to women who faced systemic violence and social subordination, were inherently gender-specific in nature. Over time, this framework contributed to a perception of women as the sole victims and men as the inevitable perpetrators of sexual and domestic offences. Such one-dimensional understanding, though originally intended to address historical inequities, no longer aligns with the evolving constitutional interpretation of equality and human rights.

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, intended as a modern and indigenized replacement for the IPC, provided a unique opportunity to recalibrate Indian criminal law in accordance with contemporary notions of gender justice and inclusivity. The reform process offered the potential to dismantle colonial legacies and construct a truly egalitarian framework that upholds the dignity of every individual. However, despite its ambitious restructuring and claims of modernization, the BNS retains several gender-specific provisions—particularly in the context of sexual offences, domestic violence, and cruelty by spouses. This selective approach undermines the universality of protection and perpetuates inequality under the guise of progress.[2]

Consequently, the central question arises: can India’s criminal justice system claim to uphold constitutional equality if its core penal statutes continue to define victimhood and culpability along gendered lines? This paper explores that tension, critically examining the BNS, 2023 through the lens of Article 14’s equality mandate, judicial developments in gender rights, and comparative international jurisprudence. It argues that gender neutrality is not merely a policy preference but a constitutional imperative essential to realizing India’s vision of justice for all.

Conceptual Foundations: Equality Before Law

Equality before law is a foundational pillar of constitutional democracy, signifying that all individuals, irrespective of gender, class, caste, or creed, are entitled to equal rights, protection, and obligations under the legal system.[1] This principle is not merely a formal guarantee but a substantive promise ensuring that justice is dispensed without arbitrariness or bias. The constitutional vision, enshrined in Articles 14 and 15, mandates the State to uphold equality and prohibit discrimination on the grounds of sex, while simultaneously empowering it to adopt special measures for disadvantaged groups. Over time, the ambit of these provisions has evolved to encompass broader dimensions of identity, extending protection to gender identity and sexual orientation as integral aspects of personhood.[2]

The Supreme Court's transformative jurisprudence—particularly in *National Legal Services Authority v. Union of India (NALSA)*[3], *Navtej Singh Johar v. Union of India*[4], and *Justice K.S. Puttaswamy v. Union of India*[5]—has expanded the interpretative horizon of equality. These landmark decisions have intertwined the concepts of dignity, autonomy, and privacy with equality, thereby shifting the focus from mere formal equality to substantive equality that addresses structural discrimination and lived realities. Through these judgments, the Court has recognized that true equality requires not identical treatment but fairness tailored to context and difference. Consequently, the doctrine of equality before law today operates as a dynamic constitutional norm—serving as a lens through which the inclusivity, fairness, and gender neutrality of legislative frameworks must be assessed.

Gender-Specific Provisions under the Bharatiya Nyaya Sanhita 2023

A comparative reading of the provisions of the Bharatiya Nyaya Sanhita (BNS), 2023 and their counterparts in the Indian Penal Code (IPC), 1860 reveals that despite the claim of modernization, many gendered biases embedded in the colonial-era framework persist. The transition from IPC to BNS was envisioned as an opportunity to align India's criminal jurisprudence with contemporary constitutional values of equality and inclusivity. However, several provisions continue to reflect a one-sided notion of victimhood, thereby overlooking the evolving realities of gender and sexuality in society.

Cruelty by Spouse (Section 85 BNS) — corresponding to Section 498A IPC — continues to criminalize cruelty by the husband or his relatives against a woman. While the objective of

protecting women from domestic abuse remains valid, the provision remains gender-specific, providing no remedy for men, elderly parents, or partners in same-sex relationships who may face similar emotional, physical, or economic cruelty.[2] This asymmetry raises questions about whether such selective protection aligns with the constitutional mandate of equality under Articles 14 and 15.

Sexual Harassment (Section 75 BNS) — replacing Section 354A IPC — also perpetuates a gendered perception of the offence by assuming the victim to be female. Although the BNS introduces minor inclusivity in offences like stalking and voyeurism, which can be gender-neutral in nature, the broader legal language still reinforces the stereotype of men as aggressors and women as victims.[2] This approach fails to recognize the empirical evidence of male and LGBTQ+ individuals also facing sexual harassment, especially in workplaces and educational spaces.

Rape (Section 63 BNS) — corresponding to Section 375 IPC — continues to define rape strictly as an offence committed by a man against a woman. Despite progressive judicial pronouncements and global legislative trends supporting gender-neutral definitions of sexual assault, the law remains exclusionary by denying recognition and redress to male and transgender victims.[6][7] This omission creates a vacuum in the legal framework, undermining the universality of bodily integrity and human dignity.

Even outside the penal sphere, civil remedies such as those under the Protection of Women from Domestic Violence Act, 2005, continue to be woman-centric. While these statutes serve an important social purpose, they collectively leave men and LGBTQ+ victims in a state of legal limbo, unprotected by gender-specific laws yet unable to access equivalent reliefs under general law.[2]

Therefore, while the Bharatiya Nyaya Sanhita, 2023 represents a step toward reform and modernization, its persistence with gendered formulations highlights the unfinished task of achieving truly gender-neutral criminal jurisprudence—one that protects all individuals equally, regardless of gender identity or sexual orientation.

Judicial Trends and Scholarly Perspectives

In recent years, the Supreme Court of India has demonstrated an increasingly progressive and

inclusive interpretation of constitutional guarantees, expanding the ambit of equality, liberty, and dignity to encompass all genders and sexual orientations. This judicial trend signifies a shift from a formalistic understanding of equality toward a substantive and intersectional model that acknowledges historical disadvantage and systemic exclusion.

The landmark decision in *National Legal Services Authority v. Union of India (NALSA)*[3] was the first to formally recognize the rights of transgender persons as integral to the constitutional promise of equality, non-discrimination, and dignity. The Court held that gender identity forms an essential component of personal autonomy and that denial of recognition amounts to a violation of fundamental rights under Articles 14, 15, 16, and 21. This was later reinforced by *Navtej Singh Johar v. Union of India*[4], wherein the Court decriminalized consensual same-sex relations, observing that constitutional morality must prevail over societal morality. The judgment underscored that the right to love and sexual expression is intrinsic to personal liberty, privacy, and equality. In *Justice K.S. Puttaswamy v. Union of India*[5], the Supreme Court elevated privacy to the status of a fundamental right, recognizing it as inseparable from human dignity and bodily autonomy. Collectively, these decisions have laid a strong constitutional foundation for gender inclusivity and sexual autonomy within Indian jurisprudence.

However, despite these transformative pronouncements, legislative inertia continues to impede the realization of gender-neutral justice. The *Bharatiya Nyaya Sanhita (BNS)*, 2023, while restructured to modernize the criminal justice system, maintains gendered definitions of sexual offences. This persistence runs contrary to the progressive recommendations of the Justice J.S. Verma Committee (2013), which had explicitly urged the government to adopt gender-neutral terminology in sexual offence laws to ensure protection for all victims of sexual violence.[6][8][9] The gap between judicial philosophy and legislative response thus highlights a constitutional dissonance—where the spirit of equality envisioned by the judiciary remains only partially translated into statutory form.

Contemporary scholarly discourse echoes this concern, emphasizing that genuine constitutional compliance demands inclusivity that transcends biological binaries. Legal scholars and gender theorists argue that the exclusion of men and transgender persons from the protective ambit of sexual offence and domestic violence laws amounts to arbitrary discrimination, violating the equality clause under Article 14 and the right to life and dignity

under Article 21.[6][7] Moreover, international human rights norms—particularly those under the Yogyakarta Principles and CEDAW General Recommendations—further underscore that justice must be gender-neutral in both form and application.

Hence, while the judiciary has courageously expanded the horizon of constitutional equality, the legislature's reluctance to embrace gender-neutral reforms continues to weaken the structural integrity of India's legal framework. Bridging this gap is essential for the realization of a justice system that truly embodies the constitutional ideals of fairness, inclusivity, and human dignity for all.

Comparative Jurisprudence: Lessons from Other Jurisdictions

The global movement toward **gender-neutral criminal law reform** provides valuable guidance for India's evolving legal landscape. Across multiple jurisdictions, the shift from gendered to gender-inclusive terminology reflects a growing recognition that sexual violence and related offences are not defined by the victim's or perpetrator's gender but by the violation of personal autonomy, consent, and human dignity.

In the **United Kingdom**, the **Sexual Offences Act of 2003** stands as a pioneering example. It redefined a wide range of sexual offences using explicitly **gender-neutral language**, replacing the older, male-perpetrator–female-victim model inherited from the Victorian era.[10] The Act's inclusive phrasing—particularly in offences like sexual assault and assault by penetration—ensures that the law offers protection and imposes liability regardless of a person's sex, gender identity, or sexual orientation. This legislative framework emphasizes consent and coercion rather than gender roles, marking a profound shift in the understanding of sexual crime.

Canada's Criminal Code follows a similar philosophy. By employing the term “sexual assault” instead of “rape” or “molestation,” Canadian law consciously avoids gendered terminology and applies uniformly to all individuals.[11] This reform has not only broadened the remedial scope for victims but also strengthened procedural fairness by ensuring equality before the criminal justice system. The focus on consent, intention, and harm—rather than biological distinctions—illustrates how a neutral legal framework can simultaneously protect victims and uphold due process.

In **Australia** and **South Africa**, comparable reforms have been instituted through statutes in **Victoria**, **New South Wales (NSW)**, and the **Criminal Law (Sexual Offences and Related Matters) Amendment Act** of South Africa.[12] These legal instruments define sexual crimes as acts committed “against a person,” thereby extending protection to individuals of all genders, including LGBTQ+ and male victims. Significantly, these jurisdictions have coupled gender-neutral drafting with victim-support mechanisms, specialized training for law enforcement, and sensitivity protocols—ensuring that neutrality in language translates into **substantive equality in practice**.

The experiences of these nations effectively **debunk the misconception** that gender neutrality dilutes women’s protection. On the contrary, inclusive drafting strengthens the integrity of the justice system by expanding the circle of protection to all who may be vulnerable, regardless of gender identity. It enhances credibility, fosters trust in legal institutions, and aligns domestic legislation with global human rights commitments. Thus, these comparative models underscore that **gender-neutral laws are not a retreat from women’s rights but a forward step toward holistic and equitable justice**.[7]

Challenges in Implementing Gender-Neutral Laws

While the constitutional and moral case for gender-neutral legal reforms in India is compelling, the road to implementation remains fraught with socio-cultural, institutional, and structural challenges. India’s hesitation to fully embrace gender neutrality in criminal jurisprudence is rooted in deeply ingrained social norms and cultural stigmas surrounding masculinity, victimhood, and sexuality. These barriers shape both public perception and policy formulation, making it difficult to acknowledge that men and LGBTQ+ individuals can also be victims of sexual or domestic violence.[7]

One of the primary challenges lies in the underreporting of offences by male and transgender victims. Fear of social ridicule, perceived loss of masculinity, and lack of institutional support deter victims from approaching law enforcement agencies. Even when such cases are reported, the absence of gender-neutral legal provisions results in procedural dismissal or misclassification of complaints. Consequently, the data on male and LGBTQ+ victimization remains severely limited, reinforcing the misconception that sexual and domestic violence are gender-exclusive phenomena.

The current legislative drafting and enforcement mechanisms also display limited sensitivity toward diverse victim realities. Many criminal statutes continue to employ binary and gendered terminology, which fails to capture the complex spectrum of gender identity and sexual orientation. Law enforcement officers and judicial personnel often lack adequate training in handling cases involving non-traditional victims, leading to institutional bias and inconsistent application of justice. As a result, the protection envisaged under Articles 14 and 21 of the Constitution is not uniformly realized.

Furthermore, societal attitudes and entrenched stereotypes perpetuate exclusion and underprotection. The traditional view that men are inherently strong and dominant, or that women are always vulnerable, distorts both victim recognition and offender accountability. Such stereotypes are not merely cultural remnants—they actively shape legislative priorities and prosecutorial discretion, impeding the creation of inclusive legal remedies.[6][7]

Another significant challenge arises from linguistic and structural inconsistencies in statutory drafting. Even where laws adopt ostensibly neutral phrasing, inconsistent references to gender in related procedural rules and evidentiary provisions create ambiguity in interpretation. This uneven legal language perpetuates uncertainty, discouraging victims and weakening the enforceability of gender-neutral protections.

Ultimately, the challenge is twofold: transforming the societal mindset that equates gender neutrality with dilution of women's rights, and institutionalizing sensitivity and training within law enforcement and the judiciary to handle cases involving all genders with empathy and fairness. Unless these structural and cultural impediments are addressed, the promise of equality before law will remain an unfulfilled constitutional ideal rather than an operational reality.

Pathways to Reform: Towards Gender-Neutral Legal Frameworks

Meaningful progress toward achieving true gender equality before law requires a holistic, multi-pronged strategy that simultaneously addresses legislative, institutional, and societal dimensions of reform. The goal is not to dilute existing protections for women but to expand the umbrella of justice so that all individuals—irrespective of gender identity or sexual orientation—receive equal recognition and redress under the law.

1. Adoption of Gender-Neutral Terminology:

A fundamental reform measure lies in the language of the law. Legislative provisions should replace binary references to “man” and “woman” with inclusive terms such as “person” or “individual.” This linguistic transformation would ensure that statutory interpretation remains consistent with the constitutional promise of equality under Articles 14 and 15.[6] By reframing offences around the act of violation rather than the identity of the victim, the legal system would shift focus from gendered assumptions to the universality of human dignity and consent.

2. Redefining Section 63 of the Bharatiya Nyaya Sanhita (BNS):

The current definition of rape under Section 63 BNS mirrors the colonial construct of sexual offences found in Section 375 of the Indian Penal Code, recognizing only women as victims. Reforming this provision to include male, transgender, and non-binary victims would bridge a long-standing gap in criminal jurisprudence. A gender-neutral definition should focus on the absence of consent and the presence of coercion, ensuring equal protection for all survivors of sexual assault. Such reform would bring Indian law in line with international best practices observed in the United Kingdom, Canada, and South Africa.

3. Mandatory Sensitization and Capacity Building:

Legal reform cannot succeed without institutional readiness. Regular sensitization and training programs for the judiciary, police, prosecutors, and medical professionals are crucial to fostering empathy and awareness about diverse victim experiences. This training should include modules on gender identity, trauma-informed responses, and procedural fairness. By strengthening institutional capacity, the justice system can ensure that gender-neutral laws translate into fair and sensitive enforcement in practice.

4. Comprehensive Data Collection and Research:

Policy formulation must be grounded in empirical evidence. There is a critical need for systematic data on the prevalence, nature, and reporting of sexual and domestic violence against men, transgender, and non-binary individuals. National agencies such as the NCRB and the Law Commission should undertake longitudinal studies and victim surveys to provide a factual basis for reform. Such data would not only inform legislative drafting but also help identify systemic barriers to reporting and justice delivery.[6]

5. Public Awareness and Social Transformation:

Legal change must be accompanied by social change. Nationwide awareness campaigns are essential to destigmatize the reporting of sexual violence regardless of the victim's gender. Media, educational institutions, and civil society organizations should collaborate to challenge stereotypes that equate masculinity with invulnerability or deny victimhood to non-female identities. Shifting public consciousness in this way will encourage more victims to seek justice and reinforce the legitimacy of gender-neutral legal reforms.[7]

In sum, advancing gender neutrality in law requires a synchronized approach that merges statutory reform, institutional training, data-driven policy, and cultural transformation. Only through such integrated efforts can India realize its constitutional vision of equality before law—ensuring that protection, dignity, and justice extend to every individual, without exception.

Conclusion: The Constitutional Promise of Equal Justice for All

The Bharatiya Nyaya Sanhita (BNS), 2023, while presented as a forward-looking replacement for the colonial Indian Penal Code, still reflects deep-rooted gender asymmetries within India's criminal justice framework. Although the intent behind the reform was to modernize and indigenize criminal law, its retention of gender-specific definitions and victim categories reveals a gap between legislative ambition and constitutional reality. By continuing to recognize only women as victims in several offences—most notably those relating to sexual and domestic violence—the BNS inadvertently marginalizes the experiences of male, transgender, and non-binary victims, thereby creating zones of legal invisibility and underprotection.

From a constitutional perspective, such selective protection is inconsistent with the equality clause under Article 14 and the prohibition of discrimination under Article 15. The Supreme Court's jurisprudence in *NALSA*, *Navtej Singh Johar*, and *Puttaswamy* has already expanded the contours of equality, dignity, and privacy to encompass diverse gender identities. Yet, the legislature's reluctance to reflect these principles in statutory language underscores a persistent disconnect between judicial recognition and legislative realization.

Comparative legal experiences from jurisdictions such as the United Kingdom, Canada,

Australia, and South Africa demonstrate that gender neutrality strengthens, rather than weakens, protections for all victims of violence. These models show that inclusive laws rooted in the universality of consent and bodily autonomy enhance procedural fairness and public confidence in justice systems.

Therefore, this article argues that gender neutrality is not a peripheral demand but a constitutional necessity—one that transforms equality from an abstract principle into a living reality. True reform requires a shift from gendered protectionism to a model of inclusive justice, where every individual, regardless of gender identity or orientation, stands equal before the law. Embracing gender-neutral criminal legislation is thus imperative for realizing India's constitutional vision of liberty, dignity, and justice for all.[6][7]

Endnotes:

1. The Constitution of India, Articles 14 & 15.
2. Bharatiya Nyaya Sanhita, 2023 (Sections 63, 75, 85), see Gender Neutrality in New Criminal Laws in India. IJFMR (2025).
3. NALSA v. Union of India, (2014) SCC 1.
4. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
5. Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
6. Prithviraj Chavan, 'Gender Neutrality in New Criminal Laws in India,' IJFMR, 2025.
7. 'Whom does Bharatiya Nyaya Sanhita really protect?' CDPP, 2025.
8. Justice Verma Committee Report, 2013.
9. Sexual Offences Act, 2003 (UK).
10. Canadian Criminal Code.
11. Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (South Africa).
12. International Journal for Multidisciplinary Research (IJFMR), Vol. 7, Issue 3, May-June 2025.