

A JUDICIAL REVIEW OF LEGAL REFORMS FOR A GENDER- NEUTRAL SOCIETY

Umesh Vithalrao Jawalikar

B.S.L., LL.B., LL.M., GDC&A., MH-SET., Ph.D. (Law) Pursuing (SPPU)

Former President, District Consumer Disputes Redressal Commission

Pune Assistant Professor, Suryadatta Law College, Bavdhan, Pune

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“The soul has no gender, then why should the law?” – Anonymous

Abstract

The transition toward a gender-neutral legal system represents one of the most complex and evolving challenges in contemporary constitutional jurisprudence. While traditional legal frameworks have been designed to address historical injustices faced by women through protective discrimination, the recognition of diverse gender identities and the emergence of new forms of victimization have exposed the limitations of gender-specific laws. This article undertakes a comprehensive judicial review of legal reforms aimed at achieving gender neutrality, focusing on constitutional principles, judicial precedents, and legislative developments in India.

Through doctrinal and comparative analysis, this paper critically evaluates whether existing gender-specific laws align with the constitutional mandate of equality under Articles 14, 15, and 21. It further examines the role of the judiciary in bridging the gap between formal equality and substantive justice. By drawing comparisons with jurisdictions such as the United Kingdom, Canada, and Australia, the article explores the feasibility of transitioning toward gender-neutral legal frameworks without compromising protections for vulnerable groups.

The study concludes that a calibrated, context-sensitive approach – rather than absolute neutrality – is essential for achieving genuine gender justice. It advocates for progressive judicial interpretation, inclusive legislative drafting, and institutional safeguards to ensure that gender neutrality enhances, rather than dilutes, constitutional guarantees.

Keywords: *Gender neutrality; constitutional law; judicial review; equality; substantive justice; LGBTQ+ rights; legal reform; India*

I. Introduction

The evolution of gender justice in India reflects a dynamic interplay between constitutional ideals and socio-cultural realities. Historically, the Indian legal system has been shaped by deeply entrenched patriarchal norms, necessitating the enactment of gender-specific laws aimed at protecting women from discrimination, violence, and systemic inequality. While such measures have played a crucial role in advancing women's rights, they have also created a legal framework that is inherently gendered.

In recent decades, however, the emergence of new discourses surrounding gender identity, inclusivity, and equality has challenged the binary foundations of law. The recognition of transgender persons, the decriminalization of homosexuality, and the growing acknowledgment of male victims of abuse have prompted a re-evaluation of gender-specific legal provisions.

This shift raises a fundamental question: can a legal system rooted in protective discrimination evolve into one that is genuinely gender-neutral without undermining the protections it was designed to provide?

This article seeks to address this question by undertaking a judicial review of legal reforms in India. It examines the constitutional framework, analyzes key judicial decisions, and evaluates the implications of transitioning toward gender neutrality. The central argument advanced is that while gender neutrality is a desirable goal, its implementation must be nuanced, context-specific, and grounded in constitutional principles.

Gender-specific laws have evolved into gender-neutral legislations, aimed at protecting all individuals equally without gender distinctions. Given the rise in various crimes and the vulnerability of all individuals in society, it is just and reasonable to advocate for inclusive laws that recognize both the crime and the victim regardless of gender.

¹ However, feminist groups and women activists oppose gender-neutral legislation, arguing that it might divert attention from genuine female victims and lead to false complaints. Concerns are raised about potential harm outweighing the intended benefits. A study of National Library of Medicine says 52.4% of men experienced gender-based violence in their life at Haryana.²

Gender Neutrality and Criminal Law: The Indian criminal justice system, as deeply entrenched as in its Constitution which guarantees of equality, continues to keep abreast of gender-biased rape laws. The definition of rape under Section 375 of the Indian Penal Code (IPC) or Section 63 (BNS) as an offence of sexual intercourse by a man with a woman unwillingly and disregarding male and transgender victims is such a gender biased law. The absence of a gender-neutral scheme of sexual offences leaves a vast section of the population vulnerable and invisible in the current legal framework. Article 14 of the Indian Constitution incorporates the spirit of equality before law and Article 21 the right to life and liberty, including the right to live with dignity. The Supreme Court in its forward-looking judgments has enlarged the scope of the rights so as to encompass persons on either side of the gender divide in *NALSA v. Union of India*. Despite such advancements, Section 375 IPC is gender-specific in a stringent way.³ By drawing on international expert perspectives about how gender-neutral laws are interpreted in their country and other parts of the globe, this paper provides insight into the global trends, best practices and possible paths to inclusive law-making. In making its argument, the paper emphasizes the need for balanced gender-neutral laws, while considering India's socio-cultural realities. Through an evidence-based, carefully drafted approach, the research concludes, inclusive Constitutional Foundation It was held in *NALSA v.*

Union of India by the Supreme Court of India that every person has the right to self-identify their laws must be created if equality, justice, and the changing needs of society are going to be met.⁴ gender. This means that gender identity is based on the personal autonomy and dignity of an individual. The identification of one's gender is independent of any medical or surgical intervention. Self-identification is thus recognised and protected as a part of fundamental rights.⁵

The combination of legal exclusion and social marginalisation creates a chilling effect, discouraging survivors from coming forward and perpetuating the belief that rape is a crime that only happens to women. In reality, gender neutrality in law is not about undermining women's protection—it's about expanding justice to all who need it. The Indian legal system can draw valuable lessons from these international approaches. First, shifting from a gender-specific to a consent-based framework would ensure that the focus remains on the violation of a person's autonomy, not their gender. Second, it demonstrates that protection for one group need not come at the cost of another; rather, legal inclusivity enhances the justice system's credibility. Justice cannot be gender-exclusive. A legal system that fails to recognise the trauma of all survivors, regardless of gender identity, falls short of its constitutional and moral duty. Gender-neutral rape laws do not undermine women's rights; rather, they uphold the principle of equal protection and ensure that justice is not denied on the basis of gender. India must now move from recognition to realisation—by enacting comprehensive, inclusive, and enforceable gender-neutral laws that reflect the true spirit of justice and human dignity.⁶

The call for gender-neutral laws, particularly in the context of domestic violence, stems from an evolving understanding of gender dynamics and the recognition of the rights of all individuals to live free from violence and discrimination. Advocates for gender neutrality argue that the existing legal framework perpetuates stereotypes and fails to protect vulnerable groups within the male and transgender populations who may face domestic abuse. They contend that the principles of equality and non-discrimination, enshrined in the Indian Constitution and international human rights instruments, mandate a legal system that offers protection to all individuals, regardless of gender. The debate over gender neutrality in laws related to sexual and domestic violence is complex, balancing the need to protect the rights of women, who are disproportionately affected by these forms of violence, with the imperative to recognize and address the vulnerabilities of other groups.

The evolution towards gender-neutral laws requires a nuanced approach that considers the specific contexts and dynamics of abuse while ensuring the legal system remains accessible and responsive to the needs of all victims of violence. The journey towards gender-neutral personal laws in India is ongoing and complex, influenced by the interplay of legal reform, societal norms, and religious practices. While significant progress has been made, especially in areas like inheritance and succession, the path ahead requires continuous effort and advocacy to ensure that all individuals, regardless of gender, have equal rights and protections under the law. This evolution is crucial for breaking barriers and promoting a more inclusive and equitable legal system in India, aligning with the principles of justice, equality, and non-discrimination. The Indian judiciary has played a pivotal role in advancing gender neutrality through landmark case laws. These judgments have not only addressed the legal disparities and biases rooted in the country's legislation but have also significantly influenced the discourse on gender equality and the rights of LGBTQ+ individuals in India.

(A) Decriminalization of Homosexuality 1. *Naz Foundation vs Govt. of NCT of Delhi* (2009) The Delhi High Court's decision in *Naz Foundation vs Government of NCT of Delhi* marked the beginning of a new era for LGBTQ+ rights in India. The court held that Section 377 of the Indian Penal Code (IPC), which criminalized consensual homosexual acts, was a violation of the fundamental rights of privacy, dignity, and equality. This landmark judgment was a significant step forward, although it was later overturned by the Supreme Court in 2013, leading to widespread criticism and a push for reconsideration. 2. *Navtej Singh Johar vs Union of India* (2018) In a historic verdict, the Supreme Court of India decriminalized consensual homosexual acts among adults, overturning its earlier judgment and affirming the rights to privacy, equality, and dignity. The Court declared Section 377 of the IPC unconstitutional to the extent that it criminalized consensual sexual conduct between adults of the same sex. This judgment was celebrated as a monumental victory for LGBTQ+ rights in India, setting a precedent for further legal reforms aimed at ensuring gender neutrality and equality. (B) Right to Privacy and Gender Identity 1. *National Legal Services Authority vs Union of India* (2014) In a landmark judgment, the Supreme Court recognized transgender persons as a 'third gender,' affirming their fundamental rights under the Constitution of India. This judgment emphasized the right to self-identified gender identity as an intrinsic part of the right to dignity and autonomy. The Court directed the government to provide legal recognition of their gender identity on official documents and to ensure that transgender individuals have access to healthcare, education, and employment opportunities, marking a significant step towards gender inclusivity in Indian law. (C) Gender Bias in Rape Laws 1. *State of Maharashtra vs Madhukar Narayan Mardikar* (1991) In this case, the Supreme Court emphasized that a woman's testimony in cases of sexual assault must be treated with the utmost seriousness, regardless of her relationship with the accused or her social background. This judgment was important in highlighting the bias and stereotypes that often influence cases of sexual violence, reaffirming the principle of equality and the need for sensitivity in the legal treatment of such cases. 2. *Independent Thought vs Union of India* (2017) The Supreme Court's decision in this case was a landmark in addressing the issue of marital rape within the context of child marriage. The Court held that sexual intercourse with a minor wife, aged between 15 and 18 years, would be considered rape. This judgment challenged the existing marital rape exception under the Indian Penal Code for minor girls, marking a significant step towards protecting the rights and dignity of girls and young women. (D) Domestic Violence and Gender Neutrality 1. *Hiral P. Harsora vs Kusum Narottamdas Harsora* (2016) In a significant judgment, the Supreme Court widened the scope of the Protection of Women from Domestic Violence Act, 2005, by striking down the words "adult male" from the definition of respondents. This meant that women could now invoke the Act against female relatives of the husband or male partner, recognizing that women can also be perpetrators of domestic violence. While the judgment did not make the law gender-neutral concerning the complainant, it was a step towards recognizing the complex dynamics of domestic violence.

These landmark case laws are indicative of the Indian judiciary's proactive stance in addressing gender biases and advocating for gender neutrality. Through these judgments, the courts have not only provided justice to the aggrieved parties but have also laid down principles that pave the way for a more inclusive and equitable legal system. The evolution of these legal precedents reflects a growing recognition of the diverse realities of individuals' lives, underscoring the imperative for gender-neutral laws in India to ensure equality, dignity, and justice for all citizens. The imperative for gender-neutral laws in India is not merely a legal or political issue but a reflection of the country's commitment to social justice, equality, and human dignity. The journey towards such a legal framework is fraught with challenges, yet it is a necessary path to ensuring that India's laws are in harmony with its democratic ideals and international human rights commitments. By embracing gender neutrality, India can forge a more inclusive society that values and protects the diversity of its people, marking a significant step towards a future where legal rights and obligations are not contingent upon one's gender.⁷ Although the principle of equal protection is enshrined in the Indian Constitution, the legal infrastructure often relies on traditional notions of victimhood, primarily associating women with the role of victims in particular offences. Consequently, legislation that aims to shield one segment of society may inadvertently neglect or marginalise others. This leads to a pressing question: *How can criminal laws in India be effectively reformed to include all genders without diluting existing protections for women?* Addressing this challenge requires a careful doctrinal investigation into statutes, judicial precedents, and interpretative trends.⁸

The **Uniform Civil Code (UCC)**, as proposed under **Article 44** of the Indian Constitution, seeks to replace personal laws governed by religious customs with a unified set of civil laws applicable to all citizens. Its adoption has long been debated as a measure to ensure equality and inclusivity.

Potential Benefits: By replacing disparate personal laws, the UCC would eliminate gender-based disparities in matters of marriage, divorce, and inheritance. It would recognise and safeguard the rights of LGBTQ+ and transgender individuals in family law, addressing existing gaps in their legal recognition.

Challenges: The UCC faces strong resistance from religious and cultural groups who fear it would undermine their traditions and practices. Drafting a truly inclusive code that balances religious sensitivities with the principles of gender neutrality is a complex challenge. **Other Policies and Provisions**

In addition to specific legislation, several other policies and provisions in India contribute to the promotion of gender neutrality:

Reservation Policies: India has implemented quotas for women and transgender persons in political institutions and educational settings to bridge gender disparities and ensure representation. For example, transgender persons have reserved seats in local governing bodies, promoting their participation in governance.

Labour Laws: The **Code on Wages, 2020** mandates equal pay for equal work, irrespective of gender, promoting inclusivity in employment. It addresses gender wage gaps and aims to create equitable workplaces.

Inheritance Laws: The Hindu Succession (Amendment) Act, 2005 grants daughters equal rights in ancestral property, a significant step toward achieving gender parity in inheritance rights. Such reforms help rectify historical biases favouring male heirs in family property distributions.⁹ India has made significant progress in advancing gender justice through legal reforms aimed at protecting and promoting women's rights. However, challenges in implementation, enforcement, and societal attitudes continue to hinder the full realization of these rights. To achieve true gender justice, it is essential to strengthen legal frameworks, improve enforcement mechanisms, and promote a culture of equality and respect for women's rights. By addressing these challenges and building on recent developments, India can continue to advance towards a more just and equitable society for all women.¹⁰

Challenges and Way Forward

Despite significant legal reforms, several challenges hinder the achievement of gender justice in India:

1. Implementation Gaps:

Infrastructure Deficits: Sturdy infrastructure is necessary for the efficient application of laws, and this includes sufficient facilities for filing complaints and reporting them.

There is insufficient infrastructure in many Indian regions, especially in rural areas, to facilitate the implementation of legislation pertaining to gender justice.

Lack of Training and Awareness: People frequently lack training regarding gender justice laws and rights, particularly in marginalised communities. Law enforcement personnel, judges, and the general public must all participate in training programs to guarantee that gender justice legislation is comprehended and applied correctly.

Social Opposition: Legal reforms are frequently met with resistance from deeply ingrained patriarchal societal norms and attitudes. It is difficult to gain broad acceptability and compliance for gender equity laws because those who stand to gain from the current quo usually oppose its implementation.

2. Patriarchal Norms:

Effect on Social Behaviour: Patriarchal standards have an impact on how people view and engage with gender roles in both communities and individuals. These standards support prejudices and preconceptions that harm women and other marginalised genders, resulting in violence and discrimination.

Discrimination and Violence: Gender-based violence and discrimination are sustained in part by patriarchal beliefs. It takes a cultural revolution that supports gender equality and dispels damaging preconceptions to address these views.

Need for Cultural Change: Beyond merely enacting new laws, gender justice needs a cultural revolution. This entails advancing gender-sensitive education, supporting gender-neutral media portrayals, and cultivating atmospheres that uphold gender equality.

3. Judicial Sensitivity:

Gender Sensitivity in the Judiciary: The judiciary is essential to maintaining gender fairness. Fair adjudication of disputes about gender requires judges and solicitors to be sensitive to gender issues.

Fair Handling of Cases Associated with Gender: Courts that are sensitive to gender issues can handle cases involving discrimination, violence against women, and other gender-related concerns more compassionately and fairly.

4. Access to Justice:

Financial Barriers: A lot of women and other marginalised people have trouble affording the legal system.

Financial assistance, accessible legal representation, and legal aid services are essential to guaranteeing that no one is prevented from seeking justice due to a lack of resources.

Social Stigma: People are frequently discouraged from pursuing justice because of the social stigma attached to reporting discrimination and abuse against women. Campaigns for public awareness and surroundings that are friendly can aid in lowering stigma and promoting reporting.

Legal Literacy and Support Systems: Raising people's understanding of the law through education and awareness campaigns can give them the confidence to know their rights and pursue justice. In addition, creating support networks like shelters and counselling services can help people impacted by discrimination and violence against women by giving them the help they need.

5. Policy Recommendations

Strengthening Legal Frameworks: It is crucial to keep examining and bolstering legal frameworks to handle new concerns about gender justice. This entails making necessary updates to present laws and passing new ones that take into account socioeconomic realities.

Improving execution procedures: Robust procedures for accountability and monitoring are necessary for the effective execution of gender justice laws. Compliance can be improved by establishing impartial organisations to supervise enforcement and handle complaints.

Encouraging Gender Education: Gender equality can be promoted by integrating gender education into school curricula and by encouraging opportunities for lifelong learning. Education helps dispel myths, encourage critical thinking, and provide people with the tools they need to speak up in favour of gender equity.¹¹

Conclusion

In India, the pursuit of gender justice is a continual process that calls for consistent societal change, efficient legal reforms, and effective execution.

Even though there have been great advancements, there is still much work to be done to attain full gender equality. To create a society that is more just and equal for people of all genders, the legislation, the courts, and civil society must make a commitment.

The quest of a gender-neutral legal system represents a significant step toward achieving constitutional equality. However, neutrality must not come at the cost of justice. A balanced approach—combining inclusivity with protection—is essential.

Judicial review has played a pivotal role in advancing gender justice, but sustained legislative action is necessary to achieve meaningful reform.

Ultimately, the goal is not merely neutrality, but a legal system that is fair, inclusive, and responsive to the needs of all individuals.

“Citizens should not passively accept judicial authority but engage with it, challenge it when necessary and work toward a legal system that reflects the evolving values of society” – Dr. B.R. Ambedkar

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