

## **GENDER-NEUTRAL JUSTICE AND REFORMS IN INDIA**

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### **1. Abstract**

The discussion on gender justice in India has generally highlighted the need for ensuring justice for women in India by protecting them from any kind of discrimination, exploitation, and inequality. The issue is very important from the perspective that, in the entire history of India, women have faced inequality in different spheres. In recent years, the need for assessing the existing framework for ensuring justice in India in the context of the need for justice, accountability, and equality for all has acquired greater importance. In this article, the concept of gender-neutral justice in India has been critically analyzed in the context of gender justice.

Gender-neutral justice seeks an understanding wherein harm, abuse, and discrimination are not exclusive to one gender. It is in support of an inclusive justice system wherein all genders receive protection. This article presents how these concepts can be implemented in such a way that it does not undermine existing women-focused laws but actually supports them. A critical analysis is provided for key areas such as domestic violence, sexual crimes, and harassment in the workplace, considering both the negative and positive sides of existing gender-specific laws.

Furthermore, the issues concerning exclusion, under-inclusion, and the potential for abuse of protectionist provisions are also addressed in the course of this study. Particular emphasis has also been placed on the need to identify gender-neutral justice in the context of the principles of equality before the law and non-discrimination contained in the constitution. In addition, the role of interpretation and policy reform in the evolving discourse has also been addressed.

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In conclusion, it may be said that, in this article, it has been asserted that gender-neutral justice is not a move away from justice for women; rather, it is a move forward towards justice.

**Key Words:** *Gender Justice, Equality Before Law, Non-Discrimination, Legal Reform in India, Women's Rights, Constitutional Principles, Judicial Interpretation.*

## 2. Introduction

The legal environment in India has been largely defined by the need to address inequalities and hardships that women experience in society.<sup>3</sup> Women have been discriminated against in society, in the economy, and in the legal environment. This has necessitated the implementation of various protective laws that ensure justice is meted out to women. These include domestic violence laws, dowry harassment laws, sexual offense laws, and harassment at work.<sup>4</sup> This is to ensure that justice is meted out to women, who have been impacted by this problem. However, with changing times in society and with the rising awareness about individual rights, the need for a more inclusive approach to justice in society has been felt.<sup>5</sup> This is where gender-neutral justice in India has come in. Gender-neutral justice is not trying to deny justice to the female gender; it is trying to ensure that justice is not exclusive in nature so that everyone in society receives justice regardless of gender. It emerges as a progressive legal approach that seeks to ensure equality before law by extending accountability and protection irrespective of their gender. The aim of the article is to discuss the need for gender-neutral justice in India, critically analyze the provisions that are in place, and then take a balanced view on the matter.<sup>6</sup>

## 3. Understanding Gender-Neutral Justice

Gender-neutral justice is a term that refers to a legal system that does not discriminate against gender in identifying victims and perpetrators of a given offense.<sup>7</sup> It has also been described as a legal system that follows a principle where justice is delivered on the basis of the nature

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<sup>3</sup> Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 2018)

<sup>4</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 2019)

<sup>5</sup> Government of India, *The Protection of Women from Domestic Violence Act, 2005*

<sup>6</sup> National Crime Records Bureau, *Crime in India Reports* available at <https://ncrb.gov.in> (last visited Mar. 24, 2026).

<sup>7</sup> Bryan A. Garner (ed.), *Black's Law Dictionary* (10th ed., Thomson Reuters, 2014)

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of the act, and not on the gender of the offender or the victim.<sup>8</sup> Gender-neutral justice, in essence, has two main components that are in line with the spirit of the constitution:

- Equal justice before the law, where all people should be treated equally in the same manner.
- Nondiscrimination, where all people should not be discriminated against on the basis of their gender.

Gender-neutral justice has been seen to be having a distinction in that there is a distinction between formal equality and substantive equality. Formal equality is where all people are treated equally, whereas substantive equality is where people are treated specially on account of their disadvantaged position in society.<sup>9</sup> For India, it has subscribed to substantive equality by giving a reason for gender-based legislation for women in society. However, the issue that has been a challenge to the legal system has been how to balance both concepts.<sup>10</sup>

#### **4. Gender-Specific Legal Framework in India**

In India, a number of legal provisions have been made regarding the rights of women. These provisions have significantly contributed to addressing their issues related to gender-based violence and discrimination.<sup>11</sup> However, it has created a number of shortcomings in terms of a gender-specific legal framework in India.

##### **4.1 Domestic Violence Laws**

The legal provisions related to domestic violence have mainly provided rights to victims who are females. Even though this provision has provided significant rights, it has not provided rights to male victims.<sup>12</sup>

##### **4.2 Cruelty and Dowry-Related Provisions**

The sections that impose a penalty for cruelty and harassment by dowry are intended to protect women in marital relationships from any kind of cruelty.<sup>13</sup> Although these sections

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<sup>8</sup> H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 2015)

<sup>9</sup> *The Constitution of India*, arts. 14 & 15

<sup>10</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), available at <https://www.unwomen.org> (last visited Mar. 24, 2026).

<sup>12</sup> *The Protection of Women from Domestic Violence Act, 2005*, No. 43 of 2005, India.

<sup>13</sup> *Indian Penal Code, 1860*, Section:498A.

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have been effective in addressing critical issues in society, it is argued that these sections are one-sided and may sometimes be used to implicate the wrong gender.<sup>14</sup>

### 4.3 Sexual Offences Laws

The legal framework of sexual offenses has traditionally been gender-oriented and has recognized the victim and perpetrator accordingly. This has resulted in the denial of the rights of male and transgender victims of sexual offenses and has limited the scope of justice accordingly.<sup>15</sup>

### 4.4 Workplace Harassment Laws

The legislation that has been framed to protect sexual harassment at the workplace has mainly protected women. Sexual Harassment of Women at Work Place (Prevention, Prohibition, And Redressal) Act, 2013 (POSH Act) plays an important role in preventing workplace harassment. This has not been done in consideration of the fact that sexual harassment can occur between individuals of different gender identities.<sup>16</sup>

Judicial intervention in *Vishaka v. State of Rajasthan*<sup>17</sup> led to the formulation of Vishaka Guidelines against sexual harassment at workplace. These guidelines later culminated in statutory enactment.

## 5. Key Challenges in the Existing Framework

### Exclusion of Male and Gender Minority Victims

One of the biggest issues that has been raised against gender-specific legislation is that it does not protect victims who are not women<sup>18</sup>. Men and gender minority groups may be subjected to domestic violence, sexual assault, or harassment, but they are not provided with legal redressal. This issue is further compounded by social stigma.

### 5.1 Concerns Regarding Misuse

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<sup>14</sup>*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

<sup>15</sup>*Criminal Law (Amendment) Act, 2013*, No. 13 of 2013, India.

<sup>16</sup>*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, No. 14 of 2013, India.

<sup>17</sup>*Vishakav. State of Rajasthan*, (1997) 6 SCC 241

<sup>18</sup> National Crime Records Bureau and gender studies reports, available at: <https://ncrb.gov.in> (last visited Mar. 24, 2026).

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Gender-oriented laws may ultimately result in the perpetuation of the stereotypes, portraying the woman as the victim and the man as the perpetrator. Such presumptions may not enable the analysis to remain neutral.

### **5.2 Perpetuation of Gender Stereotypes**

Gender-specific laws may inadvertently reinforce stereotypes, portraying women solely as victims and men as perpetrators. Such assumptions can hinder objective legal analysis and lead to biased outcomes.<sup>19</sup>

### **5.3 Lack of Inclusivity**

Despite judicial recognition of diverse gender identities, many laws continue to operate within a binary framework. This exclusion limits the effectiveness of the legal system in addressing the needs of all individuals.<sup>20</sup>

## **6. Judicial Approach and Emerging Trends**

The judiciary has played an important role in the development of the discourse on gender justice in India.<sup>21</sup> There has been an increasing focus on the need to ensure fairness, due process, and avoid arbitrariness in actions. In matrimonial disputes, there has been an effort to ensure that unnecessary arrests are not made and mediation is facilitated.<sup>22</sup> There has also been an increasing recognition of the need to ensure dignity to an individual and not misuse provisions. Furthermore, judicial recognition of gender diversity has opened doors for a more inclusive approach to justice. Though the legislative process has been slow, judicial trend indicates a shift in the balance.

## **7. The Case for Gender-Neutral Reforms**

The rationale for the need to introduce gender-neutral reforms in India can be based on different factors, with one such factor being based on the constitutional provisions, social dynamics, and the need to be inclusive.

### **7.1 Constitutional Imperatives**

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<sup>19</sup>Law Commission of India, Reports on misuse of penal provisions, available at: <https://lawcommissionofindia.nic.in> (last visited Mar. 25, 2026)

<sup>20</sup>*The Transgender Persons (Protection of Rights) Act, 2019*, No. 40 of 2019, India.

<sup>21</sup>Supreme Court of India, Judgments, available at: <https://main.sci.gov.in> (last visited Mar. 25, 2026).

<sup>22</sup>*Armesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

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In the Indian Constitution, equality before the law is provided, and at the same time, discrimination is prohibited. Gender neutrality ensures that this is done universally without leaving out any single section of the people.<sup>23</sup>

1. *National Legal Services Authority (NALSA) v. Union of India*<sup>24</sup>

In this case, the Supreme Court held that transgender persons are a "third gender," stating that all persons are equal and that their right to equality is protected by Article 14 of the Constitution.

2. *Air India v. NergeshMeerza*<sup>25</sup>

In this case, the Supreme Court struck down discriminatory conditions of service for female flight attendants that provided for retirement upon first pregnancy. It held that this was "hostile discrimination" and a violation of Article 14.

3. *C.B. Muthamma v. Union of India*<sup>26</sup>

In this case, the Supreme Court struck down a service rule that provided that female employees had to seek permission from the government prior to marriage.

## 7.2 Changing Social Realities

Today's society has been characterized by the changing family structures, gender roles, and the development of rights. It has become essential that the law adapts to the changing society in order to remain.<sup>27</sup>

1. *Justice K.S. Puttaswamy v. Union of India*<sup>28</sup>

Although this is a privacy case, this case established that sexual orientation is an essential attribute of privacy and dignity by acknowledging that personal identity is at the heart of modern life beyond antiquated legal categories.

2. *Navtej Singh Johar v. Union of India*<sup>29</sup>

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<sup>23</sup>The Constitution of India, arts. 14, 15 & 21.

<sup>24</sup>National Legal Services Authority v. Union of India, (2014) 5 SCC 438

<sup>25</sup>*Air India v. NergeshMeerza*, (1981) SC 1829

<sup>26</sup>C.B. Muthamma, I.F.S. v. Union of India, (1979) 4 SCC 260.

<sup>27</sup>PRS Legislative Research, available at: <https://prsindia.org> (last visited Mar. 25, 2026).

<sup>28</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC

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In this case, the Court struck down Section 377 of the IPC by decriminalizing homosexual acts by consenting adults by acknowledging that discrimination on grounds of sexual orientation is a violation of the principle of equality.

3. *ShayaraBano v. Union of India*<sup>30</sup>

In striking down "Triple Talaq" as unconstitutional, the Court also challenged patriarchal religious practices that made women vulnerable and thus moved towards more egalitarian religious laws.

### 7.3 Inclusivity and Human Rights

Gender-neutral laws promote inclusiveness by respecting the rights of every person, including those who do not identify themselves with a particular gender<sup>31</sup>. This is in compliance with the world's human rights standards.

1. *Rakesh v. State of NCT of Delhi*<sup>32</sup>

It has been held by the Delhi High Court that the POCSO Act is a gender-neutral law that aims to provide protection to all the children of the nation against the evil of exploitation.

2. *Ankur Mittal v. State*<sup>33</sup>

It has been held by the Delhi High Court that the male victims of sexual assault should be provided with the same protection as the female victims of sexual assault and that the legislature should enact the same accordingly.

3. *Mary Roy v. State of Kerala*<sup>34</sup>

In this landmark judgment, the Supreme Court has held that the Syrian Christian women are equally competent to inherit the property of their fathers and that no personal law can be allowed to override the constitutional right to equality.

### 7.4 Ensuring Fairness and Accountability

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<sup>29</sup>Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

<sup>30</sup>ShayaraBano v. Union of India, AIR 2017 SC 4609.

<sup>31</sup> Universal Declaration of Human Rights, available at: <https://www.un.org> (last visited Mar. 26, 2026).

<sup>32</sup>Rakesh v. State Govt. of NCT of Delhi, 2024 SCC OnLine Del 69

<sup>33</sup>Ankur Mittal v. State of NCT of Delhi, (2018) 3 SCC 201

<sup>34</sup>Mary Roy v. State of Kerala, AIR 1986 SC 1011

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This framework can assist in attaining greater justice through a focus on the offense rather than any preconceived ideas based on gender. It can also ensure greater responsibility is taken by all the perpetrators of the offense.

1. *Hiral P. Harsora v. Kusum NarottamdasHarsora*<sup>35</sup>

The Supreme Court struck down "adult male" from the definition of "respondent" under the Domestic Violence Act so that victims could seek redressal against women also.

2. *Sushil Kumar Sharma v. Union of India*<sup>36</sup>

It was noted that S. 498A (cruelty) was being misused as a "weapon" rather than a "shield." Guidelines were issued to prevent arrests of men and their family members. These guidelines were amended in *Arnesh Kumar v. State of Bihar*.

3. *Jyoti Alias Kittu v. State Govt. of NCT of Delhi*<sup>37</sup> (2025)

The court dismissed the bail petition of a woman who assaulted her husband, stating that "gender should not be a ground for leniency in dealing with violent crimes" and that "the law should be equal for both genders.

## 8. Areas Requiring Reform

### 8.1 Domestic Violence Legislation

Expanding the scope of the laws on domestic violence to include all victims can also be a way to address the gaps in these laws. However, in this case, it is important to ensure that the laws are made even stronger while covering all individuals irrespective of their gender.<sup>38</sup>

### 8.2 Sexual Offences Laws

The sexual offense laws have to be reformed to include gender-neutral definitions for the victim and perpetrator. The laws have to be based on consent, coercion, or harm rather than gender identity.

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<sup>35</sup>Hiralal P. Harsora v. Kusum NarottamdasHarsora, (2016) 10 SCC 165

<sup>36</sup>Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281

<sup>37</sup>Jyoti Alias Kittu vs The State Govt. Of Nct Of Delhi on 22 January, 2025

<sup>38</sup>Law Commission of India, Consultation Papers, available at: <https://lawcommissionofindia.nic.in> (last visited Mar. 27, 2026).

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### 8.3 Workplace Harassment Framework

The legislation on workplace harassment has to be restructured in a way that all employees are protected. A gender-neutral approach would definitely provide a safer working environment.<sup>39</sup>

### 8.4 Procedural Safeguards

The implementation of preliminary inquiries, punishments for false cases, and judicial intervention would definitely help in reducing the number of false cases without discouraging the genuine victims of harassment from seeking justice.

### 8.5 Awareness and Sensitization

In this context, it is necessary that the legal reforms are accompanied by attempts to shift societal attitudes. In this context, it is necessary that training programs for law enforcement officials and awareness campaigns are conducted.<sup>40</sup>

## 9. Balancing Neutrality and Protection

One of the biggest issues that has been a concern in this debate on gender-neutral justice is that it might undermine the position of women.

One has to understand that gender neutrality in no way implies that gender-specific laws are to be eliminated.

One can adopt a balanced approach by:

- Maintaining gender-specific laws in areas where there has been a history of discrimination.
- Adopting gender-neutral laws in the criminal laws that deal with the issue of violence and abuse.
- Making sure that it does not undermine the existing position of vulnerable groups.

This ensures that the legal system is able to deal with the historical inequalities that have existed in society without ignoring the issues that are currently being faced by society.

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<sup>39</sup>Bureau of Police Research and Development, available at: <https://bprd.nic.in> (last visited Mar. 26, 2026)

<sup>40</sup>Flavia Agnes, *writings on gender justice*.

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## 10. Conclusion

The concept of gender-neutral justice signifies an important step forward in the Indian legal paradigm. Although gender-specific legislation has been vital in redressing historical injustices perpetrated against women, the necessity for a more inclusive approach is now increasingly being realized. By concentrating on the nature of injustice rather than the gender of individuals, gender-neutral justice can potentially improve fairness, inclusivity, and accountability.<sup>41</sup> Nevertheless, it is also vital to recognize the necessity for protecting women and other vulnerable sections of society. In this context, the way forward is to strike a delicate balance between neutrality and sensitivity towards existing inequalities. By legislative and judicial interventions, Indian society can work towards creating a justice system that is more in consonance with the values of equality and dignity that are enshrined in its Constitution. In conclusion, gender-neutral justice is not a step backward in the Indian quest for gender equality; rather, it is a step forward towards realizing it in its most comprehensive and inclusive sense.

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<sup>41</sup>Upendra Baxi, *writings on human rights jurisprudence*

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