

The Need for Gender Neutrality in Indian Criminal Law and Procedure

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Abstract

The Indian criminal justice system, while aimed at ensuring justice and fairness, continues to exhibit gender bias in its legal provisions. Many laws, particularly those concerning sexual offenses, domestic violence, and dowry harassment, are gender-specific, primarily protecting women while overlooking the possibility of men, transgender individuals, and non-binary persons being victims of similar crimes. This imbalance has led to legal discrimination, wrongful prosecutions, and a lack of equal access to justice for all genders. In an era where constitutional principles of equality (Article 14), non-discrimination (Article 15), and fairness in legal procedures (Article 21) form the cornerstone of a democratic society, it becomes imperative to reassess India's criminal laws through a gender-neutral lens. Many countries, including the United Kingdom, Canada, and the United States, have already transitioned to gender-inclusive legal frameworks, ensuring equal protection for all individuals under criminal law. However, India continues to follow a gender-specific legal approach, raising concerns about fairness, human rights, and compliance with global moral standards.

This research critically examines the need for gender neutrality in Indian criminal law and procedure by analyzing judicial precedents, constitutional mandates, global legal frameworks, and the challenges in implementing gender-neutral reforms. It seeks to highlight gaps in existing laws, the misuse of protective provisions, and the urgent need for balanced legal reforms that align with evolving moral and legal trends worldwide. By comparing India's legal framework with international best practices, this study aims to propose progressive legal and policy recommendations that uphold the principles of justice, fairness, and equal protection under the law. The findings will serve as a valuable resource for policymakers, legal professionals, and human rights advocates striving for a more equitable criminal justice system in India.

Keywords: Gender Neutrality, Indian Criminal Law, Gender Bias, Legal Reforms, Criminal Procedure, LGBTQ & Rights

Introduction:

The principle of justice and equality before the law is fundamental to a democratic society. However, the Indian criminal justice system remains deeply gendered, with many laws designed primarily to protect women, overlooking the possibility that men, transgender individuals, and non-binary persons can also be victims of crimes such as sexual assault, domestic violence, and harassment. While gender-specific legal protections were historically introduced to address systemic discrimination and violence against women, the evolving social,

legal, and moral landscape calls for a reassessment of criminal laws to ensure equal access to justice for all individuals, regardless of gender.

Despite the constitutional guarantees of equality (Article 14), protection against discrimination (Article 15), and the right to a fair trial (Article 21), India's criminal law framework remains heavily gender-biased. For instance, laws such as Section 375 IPC (Section 63 BNS)(Rape), Section 498A IPC (Section 85 BNS) (Dowry Harassment), and the Protection of Women from Domestic Violence Act, 2005 are drafted in a manner that only recognizes women as victims and men as perpetrators, leading to legal discrimination and potential misuse of protective provisions. While women undoubtedly face higher rates of gender-based violence, excluding other genders from legal protection undermines the universality of human rights and equal justice.

Internationally, several countries, including the United Kingdom, Canada, and the United States, have adopted gender-neutral legal frameworks, ensuring equal recognition and protection for all victims of crime, regardless of gender. These reforms align with evolving moral standards, human rights principles, and modern jurisprudential approaches, making it imperative for India to review and reform its legal system to ensure inclusivity and fairness.

The Problem: Gender Bias in Indian Criminal Law

1. Gendered Language and Legal Definitions

Bharatiyanayasanhita 2023, predominantly defines offenses such as rape, sexual assault, and outraging modesty in a gender-specific manner, often casting women as victims and men as perpetrators. For example:

- a. Section 63BNS (Rape): Defines rape as a crime that can be committed only by a man against a woman, excluding male and transgender victims entirely.*
- b. Section 74BNS (Outraging the modesty of a woman): Protects only women, ignoring the possibility of men or non-binary individuals facing similar offenses.*
- c. Section 79BNS (Word, gesture, or act intended to insult the modesty of a woman): Again, recognizes only women as potential victims.*

This restrictive legal drafting fails to reflect the realities of sexual violence in India, where male and transgender persons are also vulnerable to such crimes. By excluding them, the law creates a systemic gap in protection, leaving many without legal recourse.

2. Marginalization of LGBTQ+ and Non-Binary Victims

The Transgender Persons (Protection of Rights) Act, 2019 acknowledges the existence of transgender persons but does not provide a comprehensive legal framework for protecting them against sexual offenses under the BNS. Consequently, transgender and non-binary

individuals often face a legal vacuum when subjected to sexual violence, harassment, or domestic abuse.

3. Violation of Constitutional Principles

Gender-specific laws stand in direct contradiction to the fundamental rights guaranteed by the Constitution:

- *Article 14: Equality before law and equal protection of the laws.*
- *Article 15: Prohibition of discrimination on grounds of sex, gender, or other identities.*
- *Article 21: Right to life and personal liberty, which includes the right to dignity and safety.*

A legal system that privileges one gender over others undermines the rule of law and constitutional morality, perpetuating systemic injustice against marginalized communities.

4. Impact on Access to Justice

By failing to recognize all genders as potential victims and perpetrators, the current legal framework denies access to justice to a significant portion of the population. This exclusionary approach not only silences victims but also distorts the administration of criminal justice, leading to underreporting, improper investigations, and miscarriages of justice.

5. Social Stereotypes Reinforced by Law

Gender-specific laws reinforce regressive stereotypes—that men are inherently aggressive, women are always victims, and non-binary individuals are invisible. These assumptions hinder efforts to build an inclusive legal system that acknowledges the complex realities of violence in contemporary society.

Global Perspective

Many jurisdictions have adopted gender-neutral frameworks for criminal law:

- a. United Kingdom: The Sexual Offences Act, 2003, recognizes any person, regardless of gender, as a potential victim or perpetrator of sexual offenses.
- b. Canada: The Criminal Code adopts gender-neutral language in defining sexual offenses.
- c. Australia: Laws in most states, including New South Wales and Victoria, are gender-neutral.

These global models demonstrate that legal reform towards gender neutrality is feasible and effective in promoting inclusivity and justice.

The Case for Reform in India

1. Recognizing All Victims

Indian law must recognize that sexual violence is not limited to women. Men, transgender persons, and non-binary individuals can also be victims of such crimes. A gender-neutral definition of rape and sexual assault is essential for equitable justice.

2. Redrafting Offense Provisions

Sections like 63,74,79 BNS should be redefined to cover all individuals as potential victims and perpetrators, ensuring that legal protection is not gender-exclusive.

3. Addressing Domestic Violence Inclusively

The Protection of Women from Domestic Violence Act, 2005, while vital, should evolve into a Protection from Domestic Violence Act, encompassing all genders to address abuse within family or intimate relationships effectively.

4. Procedural Safeguards

Gender-neutral reforms should extend to procedural laws such as the Bhartiyanayasurakshasanhita, 2023 (BNSS) ensuring fair investigation, trial, and evidence procedures for all victims and accused, regardless of gender.

Challenges to Implementation

While gender neutrality is a necessary reform, it faces challenges:

- a. Social resistance and cultural taboos regarding male and LGBTQ+ victims.
- b. Fear of misuse of gender-neutral laws, though studies show false accusations are a small fraction of cases.
- c. Legislative reluctance to amend longstanding provisions rooted in gendered assumptions.

These challenges require public awareness, legislative commitment, and judicial sensitivity.

Conclusion:

The need for gender neutrality in Indian criminal law and procedure is not just a legal reform—it is a constitutional obligation and a moral imperative. In a society that upholds equality before the law, it is untenable for the legal framework to discriminate on the basis of gender or to leave certain individuals without adequate protection under the law. The current gender-specific provisions in Indian criminal law fail to reflect the lived realities of victims across the gender spectrum, thereby undermining the principles of equality, dignity, and non-discrimination enshrined in the Constitution of India. Reforming Indian criminal laws to

embrace gender neutrality is an essential step toward creating a more inclusive, equitable, and effective justice system—one that recognizes and protects the rights of all individuals, regardless of gender identity or sexual orientation. Such reform is critical for restoring public faith in the justice system, ensuring fair access to remedies for all victims, and reinforcing India’s commitment to constitutional morality and international human rights obligations.

It is time for India’s legal system to move beyond outdated stereotypes and adopt a modern, progressive, and rights-based approach that truly serves the diverse and evolving fabric of Indian society. The journey toward gender-neutral criminal laws must be seen as an investment in justice, equality, and the protection of human dignity for all.

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