

AN EXAMINATION OF GENDER BIAS IN INDIAN LAWS: THE NEED FOR REFORMS TO PROTECT MALE RIGHTS AND ENSURE GENDER NEUTRALITY

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ABSTRACT

This paper examines the gender biases embedded in Indian laws and argues for necessary reforms to protect the rights of males and uphold gender neutrality. It analyses recent legislative changes – including the new Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) – and identifies provisions that remain gender-specific. While acknowledging the historical context of laws designed to protect women, this study highlights how such laws inadvertently exclude or disadvantage men. Drawing on landmark cases (e.g., *Navtej Singh Johar v. Union of India* and *Joseph Shine v. Union of India*) and official reports, the paper compares Indian practices with gender-neutral reforms in the United States and the United Kingdom. Key challenges to reform – including societal stigma and legal inertia – are discussed. The paper concludes with policy recommendations to amend existing statutes (such as criminalizing marital rape and extending the Protection of Women from Domestic Violence Act to all victims) and to train law enforcement in gender-neutral application of laws. These measures are intended to advance a balanced, egalitarian legal framework in line with international trends papers.ssrn.com.

Keywords: Gender Biasness, Marital Rape, Constitution, Male Rights, Gender Equality.

Introduction

Gender equality is a foundational principle of modern democracies. The Constitution of India enshrines equality before law and prohibits discrimination on the basis of sex (Article 14–15), while also allowing special provisions for women and children (Article 15(3)). In practice, however, many Indian statutes have been explicitly drafted to protect women, reflecting historical social realities but raising questions about fairness to men. Recent criminal law reforms – notably the enactment of the Bharatiya Nyaya Sanhita (BNS, 2023) replacing the Indian Penal Code, and the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023) replacing the Code of Criminal Procedure – largely retained existing provisions on sexual offences and domestic violence without making them gender-neutral prindia.org

papers.ssrn.com. As a result, male victims of abuse or sexual crime often have no legal recourse.

This paper provides a comprehensive analysis of gender bias in Indian law. Section 2 outlines theoretical foundations of gender justice and neutrality. Section 3 examines Indian statutes and case law to identify specific gendered provisions (e.g. rape, domestic violence, adultery, and maintenance laws) that overlook male rights. Section 4 offers a comparative perspective, surveying reforms in countries like the US and UK that have shifted toward gender-neutral laws. Section 5 discusses the challenges to implementing gender-neutral reforms in India, including social stigma and legal inertia. Finally, Section 6 presents recommendations for policy and legislative change, followed by a conclusion. This analysis relies on the latest

legal sources (IPC/BNS, BNSS, recent court decisions), official reports, and scholarly commentary to ensure up-to-date and authoritative coverage as of 2025 prsindia.org papers.ssrn.com.

Theoretical Framework

At the core of this study is the concept of **gender neutrality in law**. Gender-neutrality demands that legal provisions not create classifications based on gender without compelling justification. It is grounded in formal equality: every person, regardless of gender, should have equal legal protection and obligation. The principle of **gender justice** further emphasizes substantive fairness, ensuring protection and remedies for all victims of abuse irrespective of gender papers.ssrn.com. As Varsha and Greavs note, “Gender justice... seeks to ensure protection and fairness for all individuals, regardless of gender” papers.ssrn.com. This stands in contrast to an exclusively woman-centric approach, which, while addressing historical inequalities, can inadvertently neglect male victims. For example, the authors observe that India’s Protection of Women from Domestic Violence Act (PWDVA) “has historically focused on safeguarding women, a reflection of deeply entrenched patriarchal inequalities” and therefore “inadvertently neglects male victims” papers.ssrn.com.

In framing our analysis, we adopt a balanced feminist-egalitarian view. Mainstream (first-wave) feminist theory historically argued that women’s legal disabilities required special protection. While acknowledging this history and the ongoing need to protect women from violence, we also consider third-wave and men’s rights perspectives that question any discriminatory bias. International human rights instruments such as the International Covenant on Civil and Political Rights (Article 26) and the Convention on the Elimination of All Forms of Discrimination (CEDAW) underscore non-discrimination; CEDAW allows for “temporary special measures” for women but also implies a

general norm of equality. In practice, reconciling positive discrimination for women with formal gender-neutrality requires nuance. We recognize legitimate state interest in protecting vulnerable groups, but maintain that blanket gender exclusivity in criminal statutes or relief measures may conflict with the constitutional guarantee of equality. This paper hence evaluates whether the rationale for gender-specific provisions still holds and where reforms toward neutrality are warranted.

Legal Analysis

Constitutional and Statutory Context

Article 14 of the Indian Constitution guarantees equality before the law, while Article 15 prohibits discrimination on grounds of sex. Article 15(3) explicitly permits the state to make special provisions for women, acknowledging historical inequities. Nevertheless, every law must pass the test of reasonable classification. A statutory classification based on sex must have an intelligible differentia and a rational nexus to the object. Over time, various Supreme Court decisions (e.g. *State of Kerala v. NM Thomas*, *Subramanian Swamy v. CBI*) have held that protective legislation can be valid, but cannot be arbitrary.

India’s criminal and personal laws contain several gender-specific provisions. Many of these originated in colonial times or were enacted to address urgent social ills (e.g. dowry death, bride burning, high rates of violence against women). Understanding the current legal landscape requires reviewing both the traditional laws (Indian Penal Code 1860, CrPC 1973) and the new Bharatiya codes (BNS, BNSS, 2023). The new codes largely mirror previous provisions but have been restructured. As PRS India notes, “the BNS2 largely retains the provisions of the IPC” prsindia.org. In particular, Chapter on sexual offences still treats rape, molestation, and related crimes as crimes *against women*. The BNS2’s Chapter on “Sexual offences against women” explicitly retains and expands penalties for acts like rape (defined as intercourse with a *woman*) and

assault on a woman prsindia.org. Meanwhile, the BNSS's procedural rules adopt similar gendered definitions (e.g. offenses cognizable only against "women and children" victims). The 2023 legislative process did not introduce gender-neutral language; instead, certain provisions were omitted (e.g. Section 377 IPC on sodomy) without replacing them with broader formulations prsindia.org. Thus, under the new regime, most traditional gendered provisions remain in force.

Gender-Specific Criminal Offences

Rape and sexual assault (Sections 375–376 IPC/BNS): Under both the old IPC and the new BNS, rape is still defined specifically as non-consensual sexual intercourse by a man with a woman (Section 375 IPC). Marital rape remains an exception (the husband is exempt unless the wife is below 15 under the IPC). The Justice Verma Committee (2013) had recommended gender-neutral reform and criminalization of marital rape, but BNS2 explicitly did not adopt these changes prsindia.org. Courts have similarly upheld that husbands cannot be charged under rape law for intercourse with their wives (subject to the statutory age exception). As a result, male victims of rape (for example, men raped by women or male-to-male rape by non-sodomy statutes) have no remedy under the IPC/BNS. The standing committee recognized this gap: omitting S.377 means an adult man's rape is effectively not an offence "under any law" prsindia.org. This lacuna has been criticized as a major oversight, with the committee recommending re-introducing a provision to cover rape of adult men. In sum, current law treats rape as a crime only when the victim is female, leaving male victims outside the criminal law despite the fact that "a significant number of men [also] face ... abuse" papers.ssrn.com.

Marital rape: The marital rape exemption in the IPC has been controversial. India is one of the few countries that still maintains a blanket exclusion. Critics argue this contradicts the right

to bodily autonomy. Proponents of retention cite cultural or reproductive roles, but most modern judgments have urged reconsideration. The absence of marital rape as an offence underscores the gendered assumption that wives owe conjugal rights to husbands. This is a prime example where the law explicitly prioritizes one gender's rights (husband's conjugal rights) over another's safety. Given international trends (see below), this remains a major reform need.

Other sexual offences: Various IPC provisions target "women and girls" specifically. For instance, Section 354 (outraging a woman's modesty) and Section 354B (intentional disrobing of a woman) apply only to female victims prsindia.org. Stalking and voyeurism laws likewise center on women as victims. In practice, a man cannot use these provisions even if subjected to analogous conduct. The new BNS retains these as "Offences against women" prsindia.org. By contrast, sexual assault by women against men is generally prosecuted under lesser offences (e.g. Section 323 for voluntarily causing hurt) or administrative remedies, perpetuating an imbalance.

Dowry and cruelty laws: The Dowry Prohibition Act and specific IPC sections (304B for dowry deaths, 498A for cruelty to women by husband's relatives) target crimes against married women and explicitly involve dowry-related context. There is no male counterpart (no statute for cruelty by wife). Critics note misuse allegations of 498A, but regardless, the law remains one-sided in its beneficiaries. Men accused under 498A have reported police harassment. Here the legal framework grants protective and punitive measures exclusively to women's rights.

Domestic Violence Act: The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is perhaps the clearest example of a gender-specific statute. By its very title and provisions, it applies only to women (and their children) as aggrieved persons. Men, even if abused by wives or female relatives, cannot

access protection orders, residence rights, or maintenance under this Act. Scholars note that while the PWDVA was needed to address patriarchal abuse, its exclusive focus “inadvertently neglects male victims” papers.ssrn.com. In practice, male victims must seek recourse under general sections (like assault or false cases), which is often ineffective or stigmatizing. The PWDVA thus stands as a key site where gender neutrality is absent and arguably needed.

Adultery law: Historically, Section 497 IPC criminalized adultery only if a man had sexual relations with another man’s wife, exempting women altogether. This was declared unconstitutional by *Joseph Shine v. Union of India* (2018) on equal protection grounds. The Supreme Court struck down the gender bias, holding that a husband has no legal ownership over his wife’s sexuality prsindia.org. The legislative updates have removed adultery as an offence entirely prsindia.org. However, the very controversy underlines how law once assumed men’s interests over women’s as requiring protection of property rights. The reform in *Shine* was a positive step toward neutrality in that domain.

Maintenance and alimony: Under Section 125 CrPC, maintenance can be claimed by wives, children, and parents. A separated husband has no statutory provision to claim maintenance from his wife (though Hindu law previously did allow it). The Supreme Court in *Sudarshan Rao v. Sudarshan Rao* (1995) denied a husband’s maintenance petition. This asymmetry assumes men as breadwinners and women as dependents. Similar issues arise in domestic relations law, where conceptions of guardianship or adoption sometimes presume gender roles. Although not strictly criminal law, these areas reveal systemic biases: for example, a deserted husband may be left without support. Critics suggest amending maintenance law to permit support to indigent husbands or recognizing non-heteronormative family structures.

In summary, the legal analysis shows that Indian statutes currently assign protection and punishment predominantly along gendered lines. Rape law, domestic violence remedies, adultery, and maintenance are all examples where men have been treated differently, often unfavourably, relative to women. The overall scheme in the new codes retains these traditional framings prsindia.org papers.ssrn.com. This demands a review of whether such provisions violate constitutional equality and whether they serve the public interest fairly.

Comparative Analysis

India is not unique in grappling with gendered law. Many countries have historically defined sex crimes and family obligations differently for men and women. However, there is a discernible global shift toward gender-neutral legal frameworks. This section compares India’s approach with reforms in the United Kingdom and the United States, focusing on criminal and domestic violence law, as well as broader gender-neutral legislation.

United Kingdom: In the UK, major reforms in the late 20th and early 21st century aimed to eliminate gender distinctions. The Criminal Justice Act 1988 and subsequent Sexual Offences Acts expanded definitions of rape and sexual assault. The Sexual Offences Act 2003 now defines rape specifically as non-consensual penile penetration, meaning only a male can be the biological perpetrator; however, this Act created separate but equivalent offences. For example, “assault by penetration” under section 2 covers penetration by objects or body parts by any person, including female offenders and male victims. In effect, the law recognizes male victims under a different label. Critically, spousal rape was fully criminalized in 1991 (*R v. R*), abolishing the marital rape exemption. As one study observes, gender-neutral laws in the UK ensure “equal protection to all victims” of domestic abuse papers.ssrn.com. The UK’s domestic violence legislation (such as the Family Law Act 1996 and

subsequent orders) does not specify gender; protection orders can be granted to any victim, male or female. Statistics, however, show women remain the majority of reported victims, reflecting social patterns.

United States: The US has a mix of federal and state laws. Historically, many states had gendered rape laws (male rapists of females). Over recent decades, nearly all states have reformed statutes to allow any gender perpetrator and victim, recognizing the reality of male rape. Notably, the FBI's Uniform Crime Reporting (UCR) definition of rape was updated in 2013 to be gender-neutral ("penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent" papers.ssrn.com). This change reflected that male victims could now be counted. Spousal rape is a crime in every state (though some permitted the offence only in particular circumstances until the 1990s). Title IX and federal military law also apply gender-neutral language to sexual assault. Like the UK, US domestic violence laws (e.g. the Violence Against Women Act, ironically named) allow men to obtain restraining orders as well, even though they tend to target abuse against women statistically.

Global trends: The World Health Organization reports that intimate partner violence affects both genders (about 1 in 3 women and 1 in 6 men globally), suggesting no justification for an exclusively female-centric approach. Comparative legal scholars note the "efficacy of gender-neutral domestic violence laws" in countries like the UK and USA papers.ssrn.com. For instance, Scandinavian countries and Canada have codified gender-neutral definitions of rape and assault. At the same time, international human rights bodies emphasize protection of all victims: UN Secretary-General's reports on violence against women now include recommendations to address violence against men and boys in domestic settings. The Council of Europe's Istanbul Convention, while focused on violence

against women, also calls for state parties to consider the phenomenon in all gender dimensions. In short, the international trend favors inclusion. India's neighbor Sri Lanka, for example, expressly defines rape in gender-neutral terms (Penetration of vagina or anus), and Nepal's law criminalizes marital rape. In contrast, India's 2023 legislation missed a historic opportunity to align with this global shift: it "does not consider... making the offence of rape gender neutral" prindia.org.

Nevertheless, India faces unique cultural and political dynamics. The country's recent 2022 Criminal Laws (Amendment) Bill took a controversial stance by creating the specific offence of marital rape (permitting prosecution), which was later dropped. The emerging consensus among comparative jurisdictions suggests that creating a gender-inclusive framework does not negate the special protection for women; it simply broadens the protective net to cover all victims. The SSRN study by Varsha and Greavs underscores that gender-neutral DV laws can "provide equal protection to all victims and challenge stereotypes" papers.ssrn.com. India's policy-makers and judiciary can draw on such models to reform local laws without discarding women's safeguards.

Challenges to Reform

Moving from theory to practice, any effort to neutralize gender bias in law will confront several obstacles:

- **Societal attitudes and stigma:** Deep-rooted patriarchal notions paint men primarily as aggressors, not victims. Male victims of domestic violence or sexual assault often face ridicule or disbelief. Stigma and notions of masculinity discourage reporting; for example, men may fear loss of status or being labelled weak. This social context can make evidence sparse and courts hesitant to recognize male victimhood. As Varsha and Greavs point out, "societal stigmas around masculinity

prevent [male victims] from seeking help”papers.ssrn.com. Overcoming such attitudes requires public education and sensitization of police and judiciary.

- **Feminist pushback and political sensitivity:** Critics of gender-neutral reforms sometimes argue that highlighting male victims detracts from women’s issues. There is a delicate balance: reforms should not undermine necessary protections for women but should extend similar protections to men. Politically, proposals to amend laws like the PWDVA to include men have faced resistance from women’s groups fearing erosion of women’s rights. Policymakers must navigate these concerns by clarifying that gender neutrality is additive, not subtractive – offering remedies to all abused individuals.
- **Legal inertia and institutional lag:** Legislatures and courts may be slow to revisit long-established statutes. Commissions and committees (e.g. Verma Committee 2013, Malimath Committee 2003) have historically prioritized laws protecting women. Changing criminal laws involves legislative will and consensus, which may be hard to muster for complex social issues. In the recent overhaul of the IPC/CrPC, gendered provisions were largely untouched prsindia.org, indicating low political appetite for reform. Moreover, even after court judgments (e.g. *Joseph Shine* striking down adulterous bias), actual legal and procedural change can lag. Updating police manuals, training magistrates, and ensuring uniform enforcement across states is a slow process.
- **Data and evidence gaps:** Reliable data on male victims is limited. The National Crime Records Bureau (NCRB) tracks crimes primarily against women (dowry,

rape of women, etc.). There is no centralized data on men as victims of domestic violence or sexual crimes (apart from general crime stats). This paucity of statistics weakens advocacy for change. Empirical research (like the SSRN study) helps fill this void, but more field surveys and studies are needed to quantify the extent of male victimization and demonstrate the need for legal inclusion.

- **International obligations:** India is a signatory to CEDAW, which focuses on eliminating discrimination *against women*. Some argue this compels India to prioritize women’s safety. However, universal rights instruments (UDHR, ICCPR, CRPD, etc.) and Sustainable Development Goals (SDG5 on gender equality) promote equality for all genders. Balancing these commitments requires a nuanced approach: India must continue robustly protecting women while also fulfilling its broader commitment to non-discrimination for all. This may require difficult conversations about the scope of international gender-equality narratives.

These challenges suggest that reform requires not just legal text changes but cultural change, stakeholder dialogue, and phased implementation. For instance, the Law Commission had considered gender-neutral amendments to laws (including DV and sexual offence laws), but noted that any change must be accompanied by sensitization and safeguards. Ultimately, resistance to change often stems from misunderstanding; clear communication that gender neutrality means “fairness to everyone” could help mitigate opposition.

Recommendations

To address the identified biases, a multi-pronged strategy is necessary. The following recommendations aim to enhance gender

neutrality while maintaining protections for women:

- 1. Amend Rape and Sexual Offences Laws:** Revisit the definitions of rape and related crimes in the BNS. The law should be amended to define rape in gender-neutral terms (e.g. as non-consensual penetration of any person's vagina, anus, or mouth by a penis, and non-consensual penetration of any person by any object or body part). This ensures male victims and female perpetrators are covered. Simultaneously, clearly criminalize marital rape for adults in all cases, eliminating the archaic exception. This reform aligns with constitutional principles of bodily autonomy and with international norms. (The 2012 Criminal Law Amendment Bill, as passed by Parliament, had initially expanded marital rape exception to include husbands of all ages, but this was not enacted; revisiting this change is urgent.)
- 2. Broaden Domestic Violence Protections:** Modify the Protection of Women from Domestic Violence Act to be gender-neutral. This could involve renaming it the "Domestic Violence Act" and expanding "aggrieved person" to include husbands and other male family members. Alternatively, a new law could be enacted to complement PWDVA, specifically addressing domestic abuse of men. In either case, this would provide men equal access to protection orders, residence rights, and legal aid. The SSRN study argues that gender-neutral DV laws create "inclusive support systems" and mitigate stigma papers.ssrn.com. Training helpline staff and shelter homes to assist male victims is also needed.
- 3. Review 498A and Cruelty Laws:** Section 498A (cruelty by husband/relatives) should be reviewed to prevent misuse while preserving genuine protections.

This might include stricter preliminary investigation protocols, mandatory counseling, or penalties for proven false complaints by any gender. A parallel provision for cruelty by wives (against husbands) should be considered, to ensure symmetry. Family courts could be empowered to award maintenance or damages to husbands in appropriate cases.

- 4. Equalize Maintenance and Custody Rights:** Amend Section 125 CrPC and personal laws so that husbands can claim maintenance from indigent wives (particularly in cases of desertion or divorce). Judicial forums should be encouraged to interpret "wife" and "husband" clauses in existing statutes in a gender-neutral manner where possible. Encourage a data-driven review of maintenance cases to identify disparities. Similarly, in child custody, consider gender-neutral criteria rather than presuming maternal preference.
- 5. Gender-Neutral Harassment Laws:** Ensure workplace and sexual harassment statutes (such as POSH Act 2013) explicitly cover all genders. The POSH Act defines a victim as a woman, but its rules interpret "aggrieved person" broadly. A statutory clarification that any person can be a complainant (not just a woman) would help. Likewise, public awareness campaigns should highlight that men too have recourse under the law if harassed.
- 6. Police and Judicial Training:** Implement sensitization programs for law enforcement and the judiciary on gender neutrality. Police manuals should explicitly mention that men can be victims of rape or domestic violence and instruct officers to register complaints without bias. Judicial academies should train judges on the legal equality of men and women as complainants. This

institutional reform is critical; changing law text alone will not alter on-the-ground treatment.

7. **Data Collection and Research:** The government should task the NCRB or another body to track crimes against men systematically (e.g., under a new “Crimes against Men” category), including domestic violence, rape, and harassment. Commission periodic studies on male victimization in India. Solid data will inform policy and help counter narratives about gender trends. Pilot support programs (helplines, counseling centers) for male victims could be launched to collect further insights.
8. **Comparative Policy Exchange:** Learn from international models. For example, the UK’s approach of parallel offences (rape vs. assault by penetration) and the US practice of requiring gender-neutral rape definitions can guide drafting in India. Participation in international forums and bilateral exchanges on gender-neutral legislation will expose Indian policymakers to best practices.
9. **Legislative Oversight and Review:** Parliament and state legislatures should periodically review gender implications of new bills. A “gender neutrality” checklist or mandatory statement of impact (similar to financial memoranda) could be introduced, requiring that all criminal bills explicitly address whether provisions apply equally to all genders or justify exceptions.

By implementing these reforms, India can move toward a balanced legal framework. Importantly, advocacy should emphasize that reforms seek to uphold true “fair protection for all individuals impacted by abuse,” not to undermine efforts to protect women papers.ssrn.com.

Conclusion

The need for gender-neutrality in Indian law is becoming increasingly clear. While women’s protection laws have been crucial in addressing serious injustices, they leave gaps that leave male victims vulnerable and unacknowledged. The introduction of the Bharatiya Nyaya Sanhita and Nagarik Suraksha Sanhita provided an opportunity to modernize India’s criminal justice, but largely retained old gendered formulations prsindia.org. This paper has argued that reforms are needed to align India’s legal framework with constitutional equality and contemporary understanding of violence. Drawing on international examples and emerging scholarship, it proposes practical changes – from redefining rape and criminalizing marital rape, to expanding domestic violence remedies, to ensuring equal maintenance rights. Implementing these changes will require concerted effort across government, society, and the judiciary. A gender-neutral approach does not erase the challenges women face; instead, it asserts that all victims of crime deserve protection. As India aspires to gender justice, the principle that “domestic violence transcends gender” should guide law and policy papers.ssrn.com. By enacting the reforms outlined above, India can better fulfill its commitment to equality and reinforce the integrity of its justice system.

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