

## GAPS IN GENDER NEUTRAL LAWS: THE SIDE THAT GOES UNHEARD

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### ABSTRACT

When we look at the evolution of legal systems across the world throughout the years we can see the reflection of a constant attempt towards achieving justice, equality as well as fairness. But, despite the constitutional guarantees that grant us equality, a significant gap is still visible in the implementation as well as formulation of gender- neutral laws. Historically, legal frameworks, especially in countries such as India, have been shaped by patriarchal structures that necessitated protective legislation for women. While such laws were essential and important to address the systematic oppression that has been faced by women, they have been failing to accommodate the realities of a diverse and evolving society and this side of the laws has been criticized.

This research paper is addressing a very important question and that is : To what extent do current legal frameworks fail to achieve gender neutrality, and how can we effectively address these gaps? It argues that while these laws were justified in the past and were important for the protection of women, their continued dominance has created legal blind spot which can be seen affecting men, as well as the LGBTQ+ community to an certain extent. The paper examines gaps in criminal laws, family laws as well as constitutional interpretation, it highlights the issues such as exclusion of male victims, lack of protection for LGBTQ+ community and misuse of laws that were established to protect a particular gender.

The paper suggests some changes that can be brought and concludes that saying that gender neutral reforms and laws must be achieved does not amount to saying that laws related to protection for women should be undermined but it means that justice for all individuals should be brought and expanded.

**KEY WORDS:** Gender Neutrality, Legal system, Laws, LGBTQ+, Inclusivity, Equality, Constitution

### I. Introduction: The Side That Goes Unheard

Law can be regarded as a tool for ensuring justice, equality, fairness and protection for the individuals within the society. Over time legal system has tried to bring various provision in order to safeguard the groups which have historically faced discrimination or have been oppressed and considered weak, this section of individuals includes women too. These protections and provisions have been brought and have played an essential role in addressing inequality which is faced by these sections and

empower these vulnerable sections. However, as the society is evolving so are the challenges associated with ensuring justice for all individuals in the society.

In the process of trying to protect the vulnerable section and strengthening gender-specific provisions, certain areas of society, or certain sections in the society remain less visible within the legal framework. Issues faced by male victims, and those belonging to the LGBTQ+ community often go unnoticed. This leads to the questions regarding inclusivity and fairness in

our legal system. This further raises an important concern and that is whether the current legal structure adequately reflects the principle of equality it seeks to uphold.

The concept of gender neutrality in law is seen emerging as a response to such concerns. It seeks to create a legal framework which can be called inclusive, balanced and aligned with the constitutional principle of justice, equality and fairness. The dynamic nature of our society demands that laws shall adapt to the changing social realities. To understand these concerns we shall closely examine as to how the laws operate in practice and who is being left unheard. This paper seeks to explore the aspects which are overlooked and analyzes the extent to which the laws fail achieve gender neutrality.

## II. **Historic Evolution: How Did Gender Specific Laws Came Into Existence**

To understand how the present structure of legal frameworks work, we shall take a look into how and why their historical foundations were laid down. Legal systems as we see them now have traditionally been influenced by patriarchal norms which were seen governing the social relations for centuries. As we know that in many societies the women were not even granted basic rights such as right to property ownership, right to vote, right to education, in fact they were even denied things such as participation in public life. As shown in "A Jury of Her Peers" we can clearly see how the things associated with women were not even considered important, a woman's existence was merely linked to the kitchen and house chores. It is shown how when they come for investigation, the men don't even take a look at the things which belonged to Minnie even though she was the one who considered as the one who committed the murder of her husband. It shows how even though she was such an important part of the investigation for the men her things, her belongings were trivial and not important enough to be taken a look at or even be considered as an evidence. For ages women have been views as dependents and were

subject to control within both private as well as the public sphere, this can be said for countries all around the world.

In India, pre-colonial legal system was mainly guided by religious along with customary laws, these reflected deeply rooted patriarchal values. Rights given to women were often limited and their legal as well as social identity was often tied to the male members of the house, be it her father or her husband. The women were known by the name and position held by husbands or fathers. They were not considered as individuals having their own identity. Practices such as child marriage, sati and restrictions on widow remarriage was often seen highlighting as to till what extent the gender inequality is prevalent in societies.

Then the colonial period came and it was marked as a significant turning point in development of various legal reforms. Social reforms that were led by great figures such as Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar advocated for the abolition of oppressive practices such as Sati pratha. It also marked as a significant step towards the improvement of the status of women in society. Legislative measures such as the abolition of sati and widow remarriage being legalized were introduced as a part of these efforts made by such figures.

Then during the post-independence period, it can be seen how the Indian Constitution laid the foundation for a more unbiased society by guaranteeing fundamentals rights to all citizens, including equality before law and prohibiting discrimination and considering it a crime. The constitution makers realized the need to address the historical injustice faced by the vulnerable section. Along with that even the legislation recognized the need for the same and thus several laws were introduced which aimed at the protection of women from violence, exploitation and saving them from getting oppressed within the society. These laws included provisions related to dowry prohibition, domestic violence and various sexual offences.

While these laws were very important and were justified while addressing the systematic inequalities, they were framed within a single context in mind which viewed women as the primary victims. At that time this step was necessary and must for providing targeted protection. However the society has evolved but the laws have not, there are many cases where the laws which were brought for protection are seen being misused by the people for whom they were established and this is a very concerning topic and shows the limitations of these frameworks

### III. Changing Social Reality And A Need For Change

Modern society is characterized by increasing awareness of individual rights, diversity and inclusivity. Changing with the evolving society has become a new norm. Traditional practices be it related to gender or not are being challenged, with that the notion of gender as a binary concept is also being challenged, and over the years there has been growing recognition of the spectrum of gender identities. Movements which advocate for LGBTQ+ rights as well as men's rights have been very normal and have played a crucial role in bringing these issues under the light. Without such movements these issues might have gone unnoticed.

In current times, there is an increasing acknowledgement that men can be a victim too, men can be a victim of the crimes same as a woman, be it violence, sexual assault or domestic violence. But, there is still this social stigma, a wall that has been built and it won't or it isn't letting men come out and speak up, talk about it and be open to seek help when they want. These social stigmas, stereotypes and lack of legal recognition often leads to men being discouraged and thus they avoid reporting such incidents. The assumption has been made by the society, it has been drilled into the minds of people that men can never be victims but only the perpetrators, this thought process contributes to their marginalization within the legal system. Even men are not willing to recognize the crimes that have been

committed against other men. In fact, those men who come out and talk about such things openly are often laughed at and made fun of. This shows the dark reality of what the absence of gender neutral laws has led to.

The same way, individuals belonging to the LGBTQ+ community are often seen facing challenges of their own, this also happens due to lack of explicit legal recognition. While judicial decisions have made a significant progress in order to affirm the rights of such individuals, many laws are still seen operating within a heteronormative framework, limiting their effectiveness.

The changing realities that are seen in today's time highlight the need for a legal system that is responsive to the experiences of all individuals and should not limit to just one particular gender. Gender neutral laws can be a way to address these challenges by making sure that legal protections are not limited to rigid classification that is considered as normal by the society.

### IV. What Is Gender Neutrality?: Understanding Its Presence In Law

What is gender neutrality? It refers to the formulation of laws that apply equally to all individuals, despite of what gender they belong to, and what gender they identify as. It emphasizes the principle that justice should be based on the nature of act that was committed rather than the identity or gender of the individual that was involved. An approach towards bringing gender neutral laws seeks to eliminate bias and ensure that all victims be it a man or a woman gets access to legal remedies. This concept also promotes accountability by recognizing that individuals of any gender can be perpetrators of a wrongful act and shall be held liable and punished for the same. This aligns with the broader principles of equality and fairness that form the foundation stone of a democratic legal system.

However, this approach should not be misunderstood and seen as a denial of the specific challenges that a woman faces.

Instead it should be seen as representing an effort to extend the scope of legal protection to include all individuals while retaining necessary safeguards for vulnerable groups.

#### V. What Are The Gaps In Existing Framework?

Despite the promises that the constitution gives to use, promises of equality, of fairness and of inclusivity, the existing legal frameworks still has various gaps and cracks present. These gaps limit the idea of inclusivity. They are not just there in theory but have real consequences on individuals who fall outside the sphere of traditional scope of gender-specific laws. That means that traditionally women are considered to be the weaker gender, it is considered that a man is supposed to protect a woman and only a man can oppress a woman as a man belongs to a stronger gender, thus, legal reforms are also often limited to that traditional idea and thus laws where men are considered as the victims are harder to bring into picture. A closer look of these shortcomings will reveal how there is a need for change.

This gap that we are talking about can be most clearly seen when we are faced with the reality of how male victims are excluded from protective laws. Several legal provisions which talk about domestic violence and sexual offences are often framed in a way that only recognizes women as victims. This approach was historically justified due to the widespread victimization of women but in today's time it is failing to recognize the fact that men can also be victims and men can also be subjected to abuse, be it by another man or even by a woman.

Another significant gap or concern that must be talked about is the inadequate recognition of LGBTQ+ individuals within the legal system. Although there have been judicial developments that have acknowledged the rights and identities of transgender and non-binary individuals, many statutory laws still continue to operate within a rigid binary framework. This creates a sense of disconnect

between constitutional principles and legislative frameworks. As a result, it is seen that individuals from LGBTQ+ community often struggles to access justice, particularly in cases related to violence and harassment.

The issue related to misuse of gender-specific laws has also been a concern and has been widely debated. False complaints not only affect the accused but also place an unnecessary burden on the judicial system. This misuse undermines the credibility of the law and may lead to skepticism even when there is a genuine case, thereby defeating the purpose of such laws and provisions.

In addition to that, the presence of legal blind spots and limited definition often leads to a restriction to the scope of justice. The absence of gender neutral terminology in certain criminal laws prevents them from being applied in a broader and a more inclusive manner. This can lead to certain situations where the victim is denied justice just because the law does not recognize their circumstances.

There is also a noticeable gap seen when we talk about implementation and enforcement of laws. Even when the laws exists there is still lack of awareness, social stigma, societal bias and inadequate training of law enforcement agencies that often hinders the effective application of such laws.

Additionally to that, the lack of data and research on non-traditional victims as we can call them adds on to the already existing problem. Mostly studies and reports focus on women and children, which even though an important topic, leads to limited understanding of issues faced by the other groups. The absence of such data makes it difficult to formulate policies and reforms that address the needs of all individuals in the society.

These gaps can simply be summarized through the following key pointers:

1. Exclusion of male as well as LGBTQ+ victims from laws related to domestic

violence and laws related to sexual offences.

2. Lack of comprehensive legal recognition for LGBTQ+ victims.
3. Misuse of gender-specific laws, such as false allegations.
4. Blind spot that has been created due to presence of gender-specific definitions and laws.
5. Weak implementation and enforcement.
6. Presence of societal bias and social stigma.
7. Absence of reliable data and research.

When taken together these shortcomings showcase how the current legal framework even though progressive in intent, is still not fully equipped to address the complexities of our modern societies.

#### **VI. Judicial Developments and Constitutional Principles**

The Indian Constitution provides for as strong foundation for the principle of equality. Article 14 guarantees equality before law and Article 15 prohibits discrimination on the basis of sex. While Article 21 ensures us the right to life and personal liberty, this also includes the right to dignity.

As seen in recent years, the judicial developments have expanded the understanding of these principles. The fact that transgender rights are being recognized and same-sex relationships have been decriminalized, shows a significant progress in promoting inclusivity. These decisions are seen reflecting an evolving understanding of gender and identity within our legal system.

However, still there remains a huge gap between the judicial decisions and legislative actions. While courts are seen playing a very important and proactive role in advancing rights, comprehensive reforms are still needed to ensure that such principles are consistently reflected in the statutory law.

#### **VII. Balance Between Protection and Equality**

One of the most prominent challenges in the implementation of gender neutrality is bringing a balance between protecting vulnerable groups while ensuring equality at the same time. Gender-specific laws were introduced to address real and deeply rooted inequalities which were and are still to a certain extent faced by women. Therefore, any move towards gender neutrality must be made carefully to avoid weakening these protections.

A balanced approach would involve expanding the scope of existing laws to include all genders while still safeguarding the rights of vulnerable and protecting them.

#### **VIII. Rebuilding the Legal Framework**

Addressing the gaps within the existing frameworks doesn't just requires few minor amendments but it also calls for a fundamental reshaping of how the laws are conceptualized, drafted and implemented in the society. A framework that is truly inclusive must move beyond traditional gender binaries, it must focus on principle of justice for all individuals, irrespective of their gender.

One of the major and primary step that can be taken towards achieving inclusivity is the inclusion of gender-neutral language in legislation, while framing legal laws. Laws that exist often use terminology that restricts their applicability to specific genders. By replacing such terms with gender-neutral terms we can broaden the scope and ensure that no one shall be excluded. The role of the law enforcement agencies is as important as any other body involved.

Moreover, there is a need to strengthen the support system that is being provided to the victims involved. Not just the emotional support from families and friends but legal reforms must also be accompanied by accessible support services such as helpline, legal aid, etc.

Another important component is again as we discussed above, the collection of adequate

data and research. This will make the policy making procedure much easier and accurate. This process includes collecting data, conducting studies and surveys which focus on male victims and LGBTQ+ individuals as well as other marginalized groups whose experiences are often overlooked.

Along with these things, spreading public awareness is also a very important factor. Societal attitudes play a very important role in shaping the effectiveness of the legal systems. A legal framework can only bring inclusivity if the members of society accept it and implement it properly.

These measures can be summarized as followed:

1. Use of gender-neutral terms and language while framing laws.
2. Expansion of the existing laws to include all genders.
3. Sensitization of judiciary as well as proper training.
4. Strengthening personal support as well as legal support system.
5. Spreading public awareness.

In short, achieving an inclusive legal framework is not a one-dimensional task but a continuous process that requires coordinated efforts not only at a single but at multiple levels. It doesn't just involve legal reforms but also includes institutional and societal changes.

## IX. Conclusion

In conclusion it won't be wrong to say that the evolution of law as we see is closely intertwined with the evolution of our society. Legal system can't remain static, they must adapt continuously to the changing social realities, emerging identities and evolving notion of justice. While we can say that gender-specific laws have played a very important role in the past, it won't be wrong to recognize the need for gender-neutral laws in the present times. The constant gender-based assumptions within legal frameworks has led to significant gaps, which leaves certain individuals or sections of the society go unheard.

This paper highlights how the absence of gender-neutrality just does not represent a technical limitation but a deeper challenge to the principles of equality and fairness.

It can also be said that it is important to acknowledge that the demand for gender-neutrality should not be considered as a move to undermine the protections that have been provided to women and there need. Women still face structural disadvantages on various levels and they still require a strong legal safeguard. Thus, the goal is not to replace gender-specific laws but to reform and expand the same.<sup>11112</sup>

The constitution of India plays a significant role in this fight of bringing gender-neutrality and inclusivity. The principles of equality, non-discrimination and dignity which is enshrined within the constitution provides a clear mandate for creation of laws which are fair and inclusive.

In the end, we can say that the journey towards gender neutrality in law can be considered as both a necessity and inevitable. It is not merely about addressing the concerns of specific groups but about strengthening the legal system as a whole.

Ultimately, a legal system that listens to every voice and acknowledges every experience in the one that truly upholds the ideals of justice, equality, fairness as well as inclusivity.

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