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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE DOCTRINAL CONFLICT BETWEEN GENDER JUSTICE AND GENDER NEUTRALITY IN LAW**

AUTHORED BY - SAKSHI KANODIA<sup>1</sup> & PROF. (DR.) AJAY BHATT<sup>2</sup>

## **Abstract**

The discourse on gender equality in law has evolved into a complex intersection of gender justice and gender neutrality, each embodying distinct normative frameworks. Gender justice seeks to correct historical disadvantages and systemic discrimination faced primarily by women, through affirmative, protective, and gender-specific laws. In contrast, gender neutrality advocates for equal treatment of all individuals, regardless of sex or gender identity, with laws drafted in universal terms to avoid privileging or excluding any group. This research paper examines the doctrinal conflict between these two paradigms, particularly in the Indian legal context where statutes such as the Protection of Women from Domestic Violence Act, 2005 and Section 85 of the Bharatiya Nyaya Sanhita, 2023 (formerly IPC 498A) reflect gender-specific protection. While these frameworks aim to safeguard women against patriarchal structures, they simultaneously exclude male and transgender victims from recognition and redress, thereby raising concerns of discrimination under Articles 14 and 15 of the Indian Constitution.

The paper further explores how gender-neutral laws, though promising inclusivity, risk overlooking the structural inequalities and entrenched power imbalances that necessitate gender-specific safeguards. By engaging with case laws, committee reports, and comparative jurisprudence, this research highlights how an uncritical shift to neutrality may dilute the very purpose of justice. Conversely, the unchecked expansion of gender-specific protections may perpetuate misuse, stigmatization, and reverse discrimination. The study argues for a reconciliatory approach that balances substantive gender justice with inclusive neutrality, ensuring that criminal law upholds equality without reinforcing stereotypes or perpetuating exclusion. This conflict is not merely doctrinal but deeply practical, requiring nuanced legal reform that aligns with constitutional values, international human rights standards, and evolving social realities.

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**Keywords:** Gender Justice; Gender Neutrality; Criminal Law; Equality Jurisprudence; Constitutional Law; Gender-Specific Protections; Legal Reform

## Introduction

The discourse on gender equality has undergone significant transformation in the past few decades, gradually shifting from a protective justice approach towards discussions on gender neutrality in legal and social frameworks. Historically, law has recognized the need for special protection of women due to entrenched patriarchy, structural disadvantages, and systemic discrimination. This recognition gave rise to gender-specific statutes in areas such as domestic violence, sexual harassment, and matrimonial cruelty, where women were considered the primary victims and men the principal perpetrators. However, as societies evolve, this gendered framing of law has increasingly been called into question. The emergence of diverse gender identities, the rise in reported cases of abuse against men and transgender persons, and the misuse of certain protective provisions have highlighted the limitations of gender-specific justice. This has led to a doctrinal conflict between gender justice, which emphasizes protection of historically disadvantaged groups, and gender neutrality, which insists on universal equality before law.

The Indian constitutional framework itself embodies this tension. On one hand, Article 15(3) allows the State to make special provisions for women and children as a form of affirmative action, while on the other hand, Articles 14 and 15(1) mandate equality before the law and prohibit discrimination on grounds of sex. This duality creates a space where protective discrimination is both constitutionally sanctioned and simultaneously scrutinized for perpetuating gender stereotypes. The judiciary too has oscillated between these positions, sometimes upholding gender-specific protections in the interest of substantive equality, and at other times striking them down as unconstitutional for failing the test of equality. The doctrinal conflict thus raises fundamental questions: Should law focus on justice through protection or on justice through neutrality? Can a society that remains deeply patriarchal afford to abandon gender-specific safeguards in favour of neutrality? Conversely, can it continue to justify exclusion of male and transgender victims in the name of women-centric justice?<sup>3</sup>

This research paper seeks to unpack this conflict systematically. By analyzing the conceptual

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<sup>3</sup> Rafi, A. S. M. (2015). 'Gender-Neutrality' Against 'Gender Equality': Evading the Anti-feminist Backlash. *GSTF Journal on Education (JEd)*, 3(1), 9.

foundations of gender justice and gender neutrality, their constitutional underpinnings, their manifestation in statutory frameworks, and their implications in practice, the paper aims to critically evaluate the path forward. The focus is not merely to establish the conflict but to propose reconciliatory models where gender justice and gender neutrality can co-exist within a legal framework that is both inclusive and sensitive. The ultimate objective is to highlight the pressing need for legal reform that moves beyond binary framings of gender and ensures protection of all individuals without reinforcing stereotypes or perpetuating exclusion.

## Conceptual Framework

### Meaning and Evolution of Gender Justice

Gender justice refers to the principle of fairness and equity in the treatment of individuals based on gender, particularly focusing on the redressal of historical injustices and structural inequalities faced by women.<sup>4</sup> It is rooted in the recognition that patriarchal systems have relegated women to subordinate roles, denied them opportunities, and subjected them to violence and discrimination. The legal response to this imbalance has traditionally been to craft women-centric protections, ensuring that law accounts for the material realities of gender-based oppression. For instance, provisions in family law, labor law, and criminal law in India were historically designed with the assumption that women are vulnerable and require special safeguards.<sup>5</sup> Thus, gender justice has been closely aligned with substantive equality, which recognizes that treating unequals equally perpetuates inequality, and therefore mandates affirmative protection for disadvantaged groups.

Globally, movements for gender justice have been associated with feminist struggles for equal rights, suffrage, workplace equity, and bodily autonomy.<sup>6</sup> In the Indian context, gender justice has often manifested in laws like the Protection of Women from Domestic Violence Act, 2005, Maternity Benefit Act, 1961, and Section 498A of the Indian Penal Code, 1860 (now Section 85 of the Bharatiya Nyaya Sanhita, 2023). These statutes were framed to combat entrenched societal evils such as dowry harassment, workplace exploitation, and domestic abuse, thus serving the immediate need for protection in a deeply patriarchal society. However, the emphasis on protection often reinforced stereotypes of women as weak, passive, or dependent, inadvertently perpetuating gender hierarchies while attempting to dismantle them.

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<sup>4</sup> Kirp, D., Yudof, M., & Strong, M. F. (1986). *Gender justice*. University of Chicago Press.

<sup>5</sup> Gheaus, A. (2011). Gender justice. *J. Ethics & Soc. Phil.*, 6, 1.

<sup>6</sup> Molyneux, M., & Razavi, S. (Eds.). (2002). *Gender justice, development, and rights*. OUP Oxford.

### **Meaning and Evolution of Gender Neutrality**

Gender neutrality, by contrast, arises from the principle that laws and policies should be framed in universal, non-discriminatory terms, applicable to individuals regardless of their sex or gender identity. It is premised on the idea that equality before law cannot be realized if legal protections are restricted only to a specific gender. In practice, gender neutrality implies drafting statutes in a way that does not assume the identity of the victim or perpetrator, thereby recognizing that men, women, transgender, and non-binary persons can all be subjects of harm and protection.<sup>7</sup> The demand for gender-neutrality gained prominence as awareness of LGBTQIA+ rights increased and as empirical evidence of abuse against men and transgender persons came to light.

In criminal law, gender neutrality signifies a shift from presumptions that only women can be victims of sexual violence, domestic abuse, or harassment. For example, while the Indian Penal Code, 1860 and the newly enacted Bharatiya Nyaya Sanhita, 2023 recognizes rape only as a male-on-female offence, gender-neutral models in countries like Canada, Australia, and the UK extend recognition to male and transgender victims as well. Advocates argue that such inclusivity ensures justice for all individuals and prevents misuse of law by eliminating gender-based presumptions. Gender neutrality thus aligns with formal equality, where law treats everyone identically, without regard to historical disadvantage.<sup>8</sup>

### **The Doctrinal Divergence**

The conflict between gender justice and gender neutrality emerges because the two doctrines are underpinned by different visions of equality. Gender justice emphasizes substantive equality, justifying special protections for women on the basis of structural disadvantages. Gender neutrality, however, emphasizes formal equality, arguing that true fairness lies in equal treatment for all, without privileging one gender over another. The former risks perpetuating stereotypes of women as inherently vulnerable, while the latter risks ignoring the lived realities of patriarchal oppression.

In the Indian context, this divergence is particularly acute. Laws such as the Domestic Violence

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<sup>7</sup> Saguy, A. C., Williams, J. A., & Rees, M. (2020). Reassessing gender neutrality. *Law & Society Review*, 54(1), 7-32.

<sup>8</sup> Smith, P. H., & Bamberger, E. T. (2021). Gender inclusivity is not gender neutrality. *Journal of Human Lactation*, 37(3), 441-443.

Act and the POSH Act are hailed as milestones in protecting women, but they exclude men and transgender persons who may face similar harms. On the other hand, the call for neutrality is sometimes criticized for overlooking the social and cultural context where women remain disproportionately affected by gender-based violence. Thus, the doctrinal conflict is not merely theoretical but deeply practical, raising difficult questions about whether law should prioritize equity through difference or equity through sameness. The challenge lies in reconciling these two competing visions within a framework that is inclusive, context-sensitive, and constitutionally sound.

## **Constitutional Underpinnings in India**

### **Equality under the Constitution: Articles 14, 15, and 21**

The Indian Constitution lays down a robust framework for equality, but it simultaneously creates space for affirmative action, thereby embodying the tension between gender neutrality and gender justice. Article 14 guarantees equality before law and equal protection of laws, insisting that no person shall be denied equality.<sup>9</sup> Article 15(1) prohibits discrimination on the grounds of sex, yet Article 15(3) explicitly empowers the State to make “special provisions” for women and children. This creates a dual mandate: laws must avoid gender-based discrimination, but at the same time, the State is constitutionally permitted to frame protective measures for women.<sup>10</sup>

Further, Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted to include the right to dignity, safety, and freedom from violence.<sup>11</sup> The judiciary has used Article 21 to justify both gender-specific protections for women and the need for non-discriminatory inclusivity for other genders. Together, these provisions reveal the constitutional balancing act between formal equality (gender neutrality) and substantive equality (gender justice).

### **Judicial Interpretations of Gender Justice**

The Supreme Court of India has often upheld protective discrimination in favor of women under the rubric of gender justice. In *C.B. Muthamma v. Union of India*<sup>12</sup> (1979), the Court

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<sup>9</sup> The Constitution of India, Art. 14

<sup>10</sup> The Constitution of India, Art. 15

<sup>11</sup> The Constitution of India, Art. 21

<sup>12</sup> 1980 SCR (1) 668

struck down discriminatory service rules that required women diplomats to obtain permission before marriage, holding them unconstitutional under Articles 14 and 16. Similarly, in *Air India v. Nergesh Meerza*<sup>13</sup> (1981), the Court invalidated discriminatory conditions of service that forced women air hostesses to retire on marriage or pregnancy, citing the need for gender justice. These cases highlight the judiciary's recognition of women's historical disadvantage and its willingness to uphold affirmative measures as consistent with the Constitution.

The principle of gender justice was further elaborated in *Anuj Garg v. Hotel Association of India*<sup>14</sup> (2008), where the Court struck down Section 30 of the Punjab Excise Act that prohibited women from working in establishments serving alcohol. The Court emphasized that while protective discrimination is permissible, it cannot be grounded in stereotypes about women's vulnerability or morality. Gender justice, the Court reasoned, must aim at dismantling structural barriers rather than reinforcing paternalistic assumptions. Thus, judicial discourse has framed gender justice as corrective and transformative, even as it grapples with the risk of essentializing women's identities.

### **Judicial Recognition of Gender Neutrality**

In recent years, the Supreme Court has increasingly leaned toward gender-neutral interpretations of equality. In *National Legal Services Authority (NALSA) v. Union of India*<sup>15</sup> (2014), the Court recognized transgender persons as a "third gender" and directed the State to extend equal rights and protections to them, including access to reservations in education and employment. This landmark judgment explicitly expanded the scope of constitutional protections beyond the male-female binary, embodying the principle of gender neutrality.

Similarly, in *Navtej Singh Johar v. Union of India*<sup>16</sup> (2018), which decriminalized consensual same-sex relations under Section 377 IPC, the Court underscored that constitutional morality requires laws to treat all individuals equally, irrespective of gender or sexual orientation. The decision marked a decisive move toward inclusivity and neutrality, aligning Indian jurisprudence with international human rights standards. In *Joseph Shine v. Union of India*<sup>17</sup> (2019), the Court struck down Section 497 IPC (criminalizing adultery), holding that the

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<sup>13</sup> 1982 SCR (1) 438

<sup>14</sup> AIR 2008 SC 663

<sup>15</sup> 2014 INSC 275

<sup>16</sup> AIR 2018 SC 4321

<sup>17</sup> AIR 2018 SC 4898

provision was discriminatory as it treated women as passive objects rather than autonomous individuals. This judgment too reflected a neutral approach, recognizing that laws should not be grounded in unequal gender roles.

### **The Constitutional Tension**

The juxtaposition of these cases reveals the doctrinal conflict within the constitutional framework itself. On one side, Article 15(3) and earlier judicial pronouncements legitimize gender-specific protections for women under the banner of substantive equality. On the other, recent cases emphasize inclusivity and universal application of rights, pushing for gender neutrality. This duality creates a constitutional paradox: while the State is empowered to enact women-centric protections, it must also ensure that such laws do not violate the broader mandate of equality under Articles 14 and 21.

The conflict thus lies not merely in statutory drafting but in constitutional philosophy itself. Should the Constitution be read as mandating special protections until structural inequalities are dismantled, or as requiring immediate neutrality irrespective of societal realities? The judiciary's evolving stance demonstrates both the possibilities and the challenges of reconciling these two visions within the Indian constitutional order.

## **Gender Justice in Practice: Gender-Specific Laws**

### **The Protection of Women from Domestic Violence Act, 2005 (PWDVA)**

The Protection of Women from Domestic Violence Act, 2005<sup>18</sup> is one of the most significant legislative instruments advancing gender justice in India. Enacted to address the widespread prevalence of domestic violence against women, it broadened the definition of violence beyond physical abuse to include verbal, emotional, sexual, and economic abuse. The Act recognized the need for civil remedies, such as protection orders, residence orders, and monetary relief, rather than limiting victims to criminal prosecution. It thus provided a holistic framework for safeguarding women's dignity within the home, which had long been considered a private sphere immune from legal scrutiny.

However, the PWDVA's gender-specific orientation has drawn criticism. The Act identifies women exclusively as "aggrieved persons" and men as "respondents," thereby excluding male

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<sup>18</sup> The Protection of Women from Domestic Violence Act, 2005, Act 43 of 2005

and transgender victims of domestic abuse. Studies and anecdotal evidence have shown that men too suffer domestic violence, often in silence due to social stigma. Similarly, transgender persons remain invisible within the law's protection. Critics argue that this exclusion undermines the constitutional mandate of equality, rendering the Act discriminatory in practice.

### **Section 85 of the Bharatiya Nyaya Sanhita, 2023 (Formerly Section 498A IPC)**

Section 498A of the Indian Penal Code, introduced in 1983 and now re-enacted as Section 85 of the Bharatiya Nyaya Sanhita, 2023<sup>19</sup>, criminalizes cruelty by a husband or his relatives toward a wife. Initially hailed as a landmark provision to combat dowry harassment and domestic cruelty, the section embodied gender justice by recognizing the specific vulnerabilities of married women. It provided a stringent penal mechanism, making the offence cognizable and non-bailable, thus signalling the seriousness of domestic cruelty in India.

Over time, however, the Section has become highly controversial due to allegations of misuse. Numerous cases have been reported where false or exaggerated complaints were filed, leading to arrests and harassment of husbands and their families. The Supreme Court in *Sushil Kumar Sharma v. Union of India*<sup>20</sup> (2005) acknowledged that while the provision was constitutional, its misuse was a "legal terrorism" that could not be ignored. Later, in *Rajesh Sharma v. State of U.P.*<sup>21</sup> (2017), the Court even introduced guidelines to prevent arbitrary arrests under this provision. Critics argue that its gender-specific framing not only facilitates misuse but also denies justice to male and transgender victims of spousal abuse. Yet, proponents maintain that misuse does not negate the broader utility of the law in protecting women from entrenched patriarchal violence.

### **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)**

The POSH Act, 2013<sup>22</sup>, enacted following the landmark *Vishaka v. State of Rajasthan*<sup>23</sup> (1997) judgment, provides a comprehensive framework to prevent and address sexual harassment of women at workplaces. It requires organizations to establish Internal Complaints Committees,

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<sup>19</sup> The Bharatiya Nyaya Sanhita, 2023, Act 45 of 2023

<sup>20</sup> AIR 2005 SC 3100

<sup>21</sup> AIR 2017 SC 3869

<sup>22</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Act 14 of 2023

<sup>23</sup> AIR 1997 SC 3011

mandates awareness training, and recognizes a wide spectrum of unwelcome sexual behaviour. The Act was a watershed moment for gender justice, giving women the confidence to seek redress in professional spaces historically dominated by men.

Yet, the Act too is gender-specific, limiting protection exclusively to women. Men and transgender persons, despite facing harassment in workplaces, have no legal recourse under the statute. This exclusion undermines the universality of the right to dignity and equality guaranteed under Articles 14 and 21.

A 2021 survey revealed that a significant percentage of male employees reported experiencing harassment at work, but were unable to seek remedies due to the law's limited scope. Calls for reform to make the Act gender-neutral have been persistent, yet policymakers have resisted, citing the structural disadvantage faced by women in professional environments. Thus, while the POSH Act represents a milestone in advancing women's rights, it simultaneously exemplifies the limitations of gender-specific justice in an evolving society.

### **Benefits and Limitations of Gender-Specific Protections**

Gender-specific laws in India reflect the protective spirit of Article 15(3) and serve as crucial tools for addressing entrenched inequalities. They have empowered women to speak up, provided mechanisms for redress, and symbolized the State's commitment to dismantling patriarchal oppression. However, their limitations are equally striking. By excluding male and transgender victims, they perpetuate the assumption that only women are vulnerable, thereby reinforcing stereotypes. Moreover, instances of misuse erode public confidence in the legal system, creating resistance against protective laws themselves.

The central challenge lies in reconciling the need for context-sensitive protection of women with the demand for inclusive, gender-neutral frameworks. As India witnesses changing social dynamics, the shortcomings of gender-specific protections are increasingly visible, raising urgent questions about their sustainability in the long run.

## **The Case for Gender Neutrality**

### **Inclusivity of Male and Transgender Victims**

One of the strongest arguments for gender neutrality in law is its ability to recognize the universality of victimhood. Crimes such as domestic violence, sexual harassment, and assault

are not experienced by women alone. Men, transgender, and non-binary persons are also vulnerable to these harms, though their suffering often remains invisible due to stigma, cultural norms, or the gendered framing of legal protections.<sup>24</sup> Studies conducted by organizations such as the National Crime Records Bureau (NCRB) and independent NGOs indicate that a considerable percentage of men report experiencing abuse in intimate relationships but refrain from seeking help due to the lack of legal remedies and fear of social ridicule. Similarly, transgender individuals face disproportionately high levels of sexual violence and harassment, yet existing statutes rarely acknowledge their existence, let alone provide for their protection. Excluding men and transgender persons from the ambit of victimhood undermines the constitutional promise of equality under Articles 14 and 21. It also perpetuates a binary understanding of gender that is increasingly out of sync with both social realities and international human rights norms.<sup>25</sup> A gender-neutral legal framework would not only provide recognition and redress to all victims but also affirm their dignity, challenging the stereotypes that confine vulnerability to women alone.

### **Preventing Misuse and Reverse Discrimination**

Another critical justification for gender neutrality lies in addressing the misuse of gender-specific laws. While gender justice provisions were enacted with the genuine intent of protecting women, their gendered orientation has, in certain cases, facilitated false or exaggerated complaints.<sup>26</sup> Section 498A IPC (now Section 85 BNS) is the most cited example, where the Supreme Court itself acknowledged instances of “legal terrorism” through misuse. Similarly, workplace harassment complaints, though crucial in protecting women, have occasionally been weaponized against male colleagues in ways that defy the principles of fairness and due process.

Gender neutrality offers a corrective by shifting the focus from who the victim is to what the harm is. By drafting laws that are blind to gender, legislatures can prevent the presumption that men are always perpetrators and women always victims. This not only reduces the scope for misuse but also strengthens public faith in the justice system. Importantly, neutrality does not deny the structural disadvantages women face; rather, it ensures that laws remain credible by

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<sup>24</sup> Schilt, K. (2010). *Just one of the guys?: Transgender men and the persistence of gender inequality*. University of Chicago Press.

<sup>25</sup> Saguy, A. C., & Williams, J. A. (2019). Reimagining gender: Gender neutrality in the news. *Signs: Journal of Women in Culture and Society*, 44(2), 465-489.

<sup>26</sup> Fredman, S. (2017). Reversing discrimination. In *Global Minority Rights* (pp. 307-332). Routledge.

applying universally, while other policy mechanisms, such as reservations, special schemes, or awareness programs can address systemic imbalances.<sup>27</sup>

### **International Human Rights Standards**

The push for gender neutrality also derives strength from international human rights instruments and comparative legal frameworks. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) affirm the universality of rights, guaranteeing equal protection of law without discrimination. Countries such as Canada, the United Kingdom, and Australia have enacted gender-neutral criminal laws, recognizing rape, sexual assault, and domestic violence as offences irrespective of the gender of the victim or perpetrator.<sup>28</sup>

For example, the UK's Sexual Offences Act, 2003 defines rape in gender-neutral terms, ensuring protection for men, women, and transgender persons alike.<sup>29</sup> Similarly, Canada's Criminal Code and Australia's Family Violence Protection Acts adopt inclusive approaches, acknowledging that abuse can occur in any direction within intimate or familial relationships. These models demonstrate that neutrality does not dilute protection but strengthens it by removing exclusions.<sup>30</sup> They also highlight that neutrality is compatible with targeted interventions: while laws are universal, governments still implement special policies to address the disproportionate impact of violence on women.

### **Comparative Insights for India**

In the Indian context, adopting gender neutrality would align the country's legal system with its international obligations under conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which, though women-focused, also emphasizes non-discrimination more broadly and with global best practices. It would also resonate with India's own constitutional philosophy of equality and dignity. Neutrality would ensure that no individual is denied justice merely because their experience of harm does not conform to traditional gender assumptions.

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<sup>27</sup> Goldscheid, J. (2013). Gender neutrality, the violence against women frame, and transformative reform. *UMKC L. Rev.*, 82, 623.

<sup>28</sup> <https://www.usnews.com/news/best-countries/rankings/gender-equality>

<sup>29</sup> <https://www.legislation.gov.uk/ukpga/2003/42/contents>

<sup>30</sup> <https://worldpopulationreview.com/country-rankings/gender-equality-by-country>

The challenge, however, lies in ensuring that neutrality does not erase the lived realities of patriarchy. Therefore, the adoption of gender-neutral frameworks must be accompanied by context-sensitive application, for instance, maintaining data on gender-disaggregated victims, ensuring support mechanisms for women where vulnerabilities remain stark, and providing special outreach for transgender communities. In this way, neutrality can serve as a foundation for inclusivity without ignoring historical disadvantage.

### **The Doctrinal Conflict between Gender Justice and Gender Neutrality**

The doctrinal conflict between gender justice and gender neutrality lies at the core of modern constitutional thought. Gender justice is rooted in the recognition that women, as a group, have faced systemic oppression and discrimination throughout history. This approach emphasizes protective discrimination, seeking to remedy historical disadvantages by providing women-specific safeguards and affirmative legal measures. For example, laws addressing dowry, workplace harassment, and domestic violence explicitly focus on women as beneficiaries of protection, reflecting the belief that justice requires more than identical treatment, it requires tailored measures to address inequality.

Gender neutrality, however, flows from the broader equality principle, which insists that laws should treat individuals as individuals, without preconceptions tied to gender or identity. Neutrality argues that the law must be inclusive of all, men, women, transgender, and non-binary persons, in order to achieve true equality before the law. This approach challenges stereotypical notions, such as men being only aggressors and women being only victims, and aims to protect dignity universally. The conflict emerges because gender justice often operates through group-based protection while neutrality seeks universal application, creating tensions between inclusivity and protectionism.<sup>31</sup>

### **Justice vs. Equality: The Core Dilemma**

Gender justice, in its essence, prioritizes substantive equality. Substantive equality goes beyond providing identical treatment and instead recognizes the unequal realities faced by women in society. Article 15(3) of the Indian Constitution explicitly empowers the State to make special provisions for women and children, thereby constitutionally legitimizing protective measures. Acts such as the Dowry Prohibition Act, 1961, the Protection of Women from Domestic

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<sup>31</sup> Dabral, S. (2024). The Unheard Cries of Gender Neutrality.

Violence Act, 2005, and the Sexual Harassment of Women at Workplace Act, 2013 are the legal manifestation of this doctrine. They focus on addressing systemic inequalities and dismantling structures of patriarchal oppression, even if this requires asymmetrical protection.<sup>32</sup>

Gender neutrality, on the other hand, derives primarily from Articles 14 and 15(1), which emphasize equality before the law and prohibit discrimination. Neutrality demands that laws avoid assumptions about gender roles and extend protection or liability equally across all genders. For example, a gender-neutral law on sexual harassment would protect men, women, and transgender persons equally, recognizing that harm is not confined to one identity. The conflict arises because while justice-driven laws correct historical wrongs, they risk excluding men and other genders, whereas neutrality-driven laws promote inclusivity but may overlook deeply entrenched inequalities. This creates a delicate balancing act between justice as remedial action and equality as universal application.

### **Risks of Neutrality**

One of the greatest risks of gender neutrality is that it may inadvertently ignore structural inequalities. In patriarchal societies, women are disproportionately subjected to gender-based violence, economic dependence, and social discrimination. A gender-neutral domestic violence law, for instance, may fail to recognize the overwhelming vulnerability of women in such contexts, resulting in under-protection. Resources such as shelters, legal aid, and counselling may become diluted if equal priority is given to all genders without acknowledging who suffers most. This weakens the emancipatory intent of protective legislation and reduces its effectiveness in empowering women.

Another limitation lies in the gap between formal equality and substantive equality. Gender-neutral laws often embody formal equality by ensuring identical treatment, but they fail to achieve substantive justice in outcomes. For example, even if sexual harassment laws were made gender-neutral, women might still face greater barriers in reporting harassment due to fear of stigma or retaliation. Neutrality without sensitivity can create a false sense of fairness, while the actual ground reality remains unequal. Thus, neutrality risks perpetuating injustice by masking structural inequalities under the guise of fairness.

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<sup>32</sup> Cohen, G. A. (2008). *Rescuing justice and equality*. Harvard University Press.

### **Risks of Gender-Specificity**

While protective laws aim to ensure justice, gender-specificity too has its dangers. A central concern is reverse discrimination, when laws explicitly name women as the only victims, men and transgender persons are excluded from protection. Section 375 of the IPC (now Section 63 of the BNS), which historically recognized only women as rape victims, left male and transgender survivors without legal recourse. Such gender-specific drafting entrenches inequality by failing to acknowledge the universal possibility of victimization. It also fosters resentment, leading to a perception that laws favour one group at the expense of others.

Another risk is the misuse of protective laws, a reality acknowledged by courts. In *Rajesh Sharma v. State of U.P.* (2017), the Supreme Court noted the misuse of Section 498A IPC by some women to harass husbands and in-laws, illustrating how gender-specific laws can be weaponized. Over-specificity not only harms innocent men but also undermines the credibility of genuine female victims. Additionally, gender-specific laws entrench stereotypes of women as perpetual victims, reinforcing paternalistic notions. In *Anuj Garg v. Hotel Association of India* (2008), the Court warned against protective discrimination that undermines autonomy. Furthermore, the exclusion of LGBTQIA+ individuals, as seen in the Sexual Harassment of Women at Workplace Act, 2013, reveals how gender-specificity fails to keep pace with evolving understandings of gender diversity.

### **The Doctrinal Balance**

The judicial journey reveals that neither gender justice nor neutrality can independently resolve gender inequality. A purely justice-based approach, centered on protective discrimination, risks overreach by excluding men and transgender persons, fostering stereotypes, and inviting misuse. On the other hand, a purely neutrality-based approach risks creating hollow equality that fails to account for entrenched patriarchal realities. Both approaches, taken in isolation, are incomplete in addressing the complex, multi-layered nature of gendered harm.

The path forward lies in a dialectical balance between justice and neutrality. Law must simultaneously recognize historical oppression and uphold universal dignity. Gender-neutral drafting, when combined with sensitive implementation, offers a middle ground. For example, sexual offence provisions can be gender-neutral in text while judicial guidelines emphasize the disproportionate impact on women. Similarly, workplace harassment laws can protect “any person” while retaining affirmative measures to encourage women’s participation in

employment. By harmonizing inclusivity with sensitivity, constitutional morality can align with international human rights standards to build a framework that is just, equal, and inclusive.

## Conclusion

The conflict between gender justice and gender neutrality is not an irreconcilable binary but a dynamic dialogue within constitutional jurisprudence. Gender justice emerged as a vital corrective to centuries of systemic oppression against women, ensuring safeguards in areas like domestic violence, dowry harassment, and workplace exploitation. Yet, its women-centric focus often entrenched stereotypes of victimhood and excluded men, transgender persons, and non-binary individuals from legal remedies. Conversely, gender neutrality embodies the constitutional mandate of equality under Articles 14 and 15, seeking to protect all persons irrespective of identity. But neutrality, when applied in isolation, risks ignoring the deeply entrenched patriarchal structures that continue to marginalize women.

Therefore, the path forward is neither blind justice nor rigid neutrality but a hybrid framework that harmonizes the two. Laws must be drafted in gender-neutral terms to uphold inclusivity, but, implemented with sensitivity to contextual vulnerabilities to ensure substantive equality. This reconciliatory approach aligns with the doctrine of constitutional morality, as enunciated in the case of *Navtej Singh Johar v. Union of India*, and resonates with international commitments under CEDAW, ICCPR, and the Yogyakarta Principles. The conclusion is clear, i.e., justice and neutrality are not adversaries but complementary allies in the pursuit of equality.

## Suggestions

### 1. Legislative Reforms: Beyond Binary Drafting

If law is the reflection of society's conscience, then its drafting cannot remain imprisoned in binary categories. The first reform must be to craft statutes that recognize the reality of diverse victimhood. For instance, sexual offences in the *Bharatiya Nyaya Sanhita* (BNS) still largely presume women as the exclusive victims and men as the aggressors. This is not merely outdated, it is a constitutional infirmity. By drafting laws that criminalize sexual violence against "any person," India would send a powerful message: dignity is not gender-contingent, but human-centric. Yet the challenge lies in balancing inclusivity with sensitivity. Should the law make no distinction between a transgender man facing sexual assault and a woman in a

custodial setting? Perhaps not in definition, but certainly in aggravating factors. Justice requires that the law retain heightened punishment for contexts where women remain disproportionately vulnerable, such as domestic violence or workplace harassment, even while opening the door for all survivors to seek redress.

Similarly, transforming the Protection of Women from Domestic Violence Act, 2005 into a Comprehensive Domestic Violence Code can challenge entrenched stereotypes. Domestic abuse is not the exclusive experience of women; men too are victims, often silenced by shame and disbelief, while transgender persons experience violence compounded by social stigma. A neutral statute could address this gap. Yet neutrality without infrastructure risks being hollow, shelters, counselling, and financial aid will still need to disproportionately benefit women because the numbers demand it. Thus, drafting must walk the fine line: gender-neutral in text, gender-sensitive in implementation. The true test of legislative reform is not whether it removes women from the center, but whether it expands the circle wide enough to include everyone without erasing the vulnerabilities of those who remain most marginalized.

## **2. Judicial Interpretation: Re-imagining Constitutional Morality**

Even the most progressive statute can fail if courts interpret it through the lens of stereotype. Judicial interpretation, therefore, is the crucible where neutrality and justice must be reconciled. Indian courts have oscillated between paternalism and autonomy. In *Anuj Garg v. Hotel Association of India*, the Supreme Court warned against “protective discrimination” that infantilizes women. Yet in cases of domestic violence or sexual harassment, courts sometimes echo social morality, treating women as fragile beings in need of constant protection. This inconsistency shows that the battle is not only textual but attitudinal.

The suggestion, then, is to root judicial reasoning in constitutional morality rather than fluctuating cultural values. Constitutional morality, as invoked in *Navtej Singh Johar v. Union of India*, demands protection of dignity and autonomy over societal prejudice. This lens would allow courts to extend protections to male and transgender survivors even where statutes remain silent. It would also compel judges to dismantle stereotypes, ensuring that women are not portrayed merely as victims but as autonomous rights-bearers. The re-imagination here is bold: could courts, through interpretive creativity, become catalysts for gender-neutral jurisprudence even before Parliament acts? The history of Indian constitutional law suggests they can - and must.

### **3. Policy and Institutional Mechanisms: Justice Beyond the Courtroom**

Law in books achieves little without law in action. For gender-neutrality to be meaningful, institutional support systems must evolve. Imagine a male survivor of domestic violence seeking refuge in a shelter home, would he even be admitted? Or consider a transgender employee harassed in the unorganized sector, would they find a complaint mechanism? These questions expose the lacunae of current frameworks. The solution lies in creating multi-gender counselling centers, crisis shelters, and hotlines that do not presume the identity of the victim beforehand. But here too, proportionality matters: resource allocation must reflect statistical prevalence without denying minority experiences.

At the same time, policies must grapple with the thorny issue of misuse. Section 498A IPC (now Section 85 BNS) stands as a stark reminder of how protective laws can be weaponized. But does the possibility of misuse justify dilution of rights? The reconciliatory approach would not be to weaken protections but to create neutral safeguards: independent review committees for complaints, transparent preliminary inquiries, and penalties for proven false cases. Such mechanisms would preserve faith in the law while ensuring genuine survivors are not silenced by fear of disbelief. Institutional reform, then, is not about creating more laws but about ensuring that the legal system is a space of trust, where victims, irrespective of gender, are heard and protected, and where justice is not clouded by the suspicion of manipulation.

### **4. Education and Social Transformation: Changing the Grammar of Justice**

Perhaps the deepest reform lies not in statutes or judgments but in education and culture. Law cannot operate in a vacuum; it is embedded in social attitudes that often resist change. If law schools continue to teach gender as a binary and reduce gender justice to “women’s rights,” the next generation of lawyers will perpetuate the same exclusionary frameworks. Legal education must, therefore, be re-engineered to include courses on gender neutrality, intersectionality, and LGBTQIA+ rights, equipping future practitioners to think beyond stereotypes.

But education must also extend to judges, police, and society at large. Training police officers to recognize male or transgender survivors as credible complainants is as vital as sensitizing judges to avoid paternalism. At the societal level, awareness campaigns must dismantle myths: that men cannot be victims, that women are always vulnerable, that transgender persons exist outside the ambit of law. The transformation here is cultural: to replace the language of

“protection” with the language of “autonomy,” and to replace the imagery of women as perpetual victims with the vision of individuals as rights-bearers. Only when society changes its grammar of justice will the law’s reconciliatory promise become a lived reality.

### **5. International Alignment: Expanding India’s Moral Horizon**

Finally, India cannot insulate itself from global standards. As a signatory to CEDAW, ICCPR, and ICESCR, and as a constitutional democracy that prides itself on its human rights record, India has a moral and legal duty to align its domestic laws with international norms. The Yogyakarta Principles, which affirm the rights of individuals irrespective of sexual orientation and gender identity, are not merely aspirational, they provide a blueprint for truly inclusive legal frameworks. But the thought-provoking question is: should India wait for international pressure, or can it lead the way in crafting laws that recognize the full spectrum of gender identities?

International alignment is not about imitation but about integration. For instance, CEDAW’s focus on eliminating discrimination against women must be read together with the ICCPR’s commitment to equality for all persons. By integrating these principles, India can develop a unique jurisprudence: one that acknowledges women’s disproportionate vulnerabilities while refusing to marginalize others. In doing so, India would not only fulfil its obligations but also set a precedent for other nations grappling with the same doctrinal conflict. The opportunity here is historic: to demonstrate that gender justice and neutrality are not competing imports but universal human values that can flourish together.

The reconciliation of gender justice and gender neutrality is both a moral and constitutional imperative. Justice without neutrality risks perpetuating stereotypes and exclusions, while neutrality without justice risks hollow equality. Together, however, they can create a jurisprudence that is inclusive, empowering, and truly reflective of the constitutional vision. Such a framework would not dilute protections for women but strengthen them by situating them within a universal architecture of rights, thereby enhancing the legitimacy and effectiveness of law.

As Dr. B.R. Ambedkar emphasized, the Constitution is not merely a legal text but a “moral compass” for social transformation. The promises of dignity, liberty, and equality under Articles 14, 15, and 21 can only be fulfilled when gender justice and neutrality are seen as allies

rather than adversaries. The ultimate aspiration of Indian law must be to create a legal order where every individual, regardless of gender identity, can approach the courts with confidence that they will find justice, not stereotypes or exclusions. The future of Indian criminal jurisprudence lies in embracing this reconciliatory model, which bridges past inequities and paves the way for a more inclusive tomorrow.

