

## Gender Discrimination under Indian Criminal Laws: A Critical Analysis <sup>1</sup>

### **Abstract:**

Gender discrimination within India's criminal justice system remains deeply entrenched, reflecting societal biases and patriarchal norms. Despite progressive laws such as the *Protection of Women from Sexual Harassment at Workplace Act, 2013* and the *Protection of Women from Domestic Violence Act, 2005*, many discriminatory provisions of the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) persist under the *Bharatiya Nayay Sanhita, 2023 (BNS)* and *Bharatiya Nagarika Suraksha Sanhita, 2023 (BNSS)*.

The legal framework largely portrays women as victims and men as perpetrators, restricting itself to binary gender roles. Crimes like rape, sexual harassment, dowry, and domestic violence are defined only as acts committed by men against women. This exclusion denies male and transgender victims legal protection and reinforces stereotypes about gender roles.

Bias extends into interpretation and enforcement. Judicial decisions and police practices often mirror societal expectations of femininity and masculinity. Women conforming to traditional roles may receive leniency, while those defying norms—such as female offenders in violent crimes—are judged more harshly. Male victims of sexual violence or domestic abuse face stigma and disbelief, leading to underreporting and lack of legal recourse.

Intersectionality further compounds discrimination. Gender bias interacts with caste, class, and socio-economic status, disproportionately affecting marginalized communities. Thus, the system not only enforces patriarchal norms but also perpetuates structural inequalities.

In conclusion, while Indian criminal laws have evolved to address gender-based violence, they fall short of ensuring genuine gender justice. A shift toward an inclusive, intersectional, and gender-sensitive framework is essential to uphold

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<sup>1</sup> By Ashwini Parab, Assistant Professor, Raja Lakhamgouda Law College, Belagavi, Karnataka

constitutional promises of equality and dignity for all citizens, irrespective of gender identity or expression.

**Keywords:** Gender, Discrimination, Gender-neutral, Criminal Justice System, Gender Justice

# Gender Discrimination under Indian Criminal Laws: A Critical Analysis

## Introduction

Gender discrimination in India is a deeply rooted issue that transcends social, cultural, and economic boundaries. While the Indian Constitution enshrines the principles of equality and non-discrimination, the reality that haunts women, transgender persons, and gender non-conforming individuals is a stark contrast. The Indian criminal justice system, despite its progressive aspirations, continues to hold a patriarchal structure of society. This is observed not only in the letter of laws but also in their interpretation, enforcement, and the institutional attitudes that govern them<sup>2</sup>.

## Sex and Gender

Sex refers to the set of particular physical and biological attributes that define a male, a female or an intersexual. For example, in the case of humans, it belongs to one sex or another depending on factors such as genetic composition, hormonal processes and phenotypic characteristics.<sup>3</sup> When talking about phenotypic sexual characteristics, these are the internal and external sexual characteristics that are observable in a person. For example, genitals, hormonal processes, reproductive system, physical/body constitution, etc. These characteristics begin to develop near the seventh week of gestation of the organism. The gender is the social perception we have of a person about what is appropriate in relation to their biological sex, sexual orientation, and other aspects of their identity. This perception is determined by the social and cultural context, as well as by the biological and psychological characteristics of an individual. A person may have a gender identity different from that assigned in their society. It can be assigned before birth, usually associated with the person's sex.<sup>4</sup>

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<sup>2</sup> <https://www.iurisjura.com/post/critical-analysis-on-gender-inequality-in-the-criminal-justice-system-in-india>

<sup>3</sup> [emanticscholar.org/paper/The-Sex-Gender-Distinction-in-Contemporary-Gender-Lighty-cf1abbf03fe5371f631981fc9a5a1207cb8012db](https://emanticscholar.org/paper/The-Sex-Gender-Distinction-in-Contemporary-Gender-Lighty-cf1abbf03fe5371f631981fc9a5a1207cb8012db)

<sup>4</sup> Dr.Nagaraju Kilari, “*GENDER INEQUALITY IN INDIA*”, RESEARCHGATE

[https://www.researchgate.net/publication/348326280\\_GENDER\\_INEQUALITY\\_IN\\_INDIA](https://www.researchgate.net/publication/348326280_GENDER_INEQUALITY_IN_INDIA) (visited on April 2<sup>nd</sup> 2025)

In 2023, major changes have taken place in Indian Criminal laws by introduction of Bharatiya Nayay Sanhita<sup>5</sup>, Bharatiya Nagarika Suraksha Sanhita<sup>6</sup> and Bharatiya Sakshya Adhiniyam<sup>7</sup>, replacing the colonial laws in India. The colonial laws and various special legislations had historically been designed with a binary understanding of gender. However, the new laws to a very large extent have retained the colonial law with few alterations. But the issue continues, that is, the new laws have continued the binary recognition of gender, thereby ignoring the LGBTQ+ community. The Criminal Laws portray women as passive victims in need of protection, while men are cast as aggressors. This dichotomy fails to account for the complex spectrum of gender identities and experiences. Moreover, the system often overlooks the vulnerabilities of men and LGBTQ+ individuals who may also be victims of violence and discrimination<sup>8</sup>.

The intersection of gender with other societal factors like caste, class, and socio-economic status further exacerbates discrimination. For instance, marginalized women, such as Dalits and Adivasis, often face compounded injustices, including custodial violence, lack of access to legal aid, and absolute neglect of their rights by law enforcement agencies. Therefore, it becomes very important in India to have an equitable criminal justice system.<sup>9</sup>

The article highlights that the gender discrimination under the India criminal legal system is existing against men as well as LGBTQ community and covers its various facets gender disparity spread across the following scheme: constitutional framework and its mandate of equality, gender-specific provisions in Indian criminal law and their implications, gender bias in law enforcement and the judiciary, intersection of caste, class, and socio-economic dimensions of gender discrimination, misuse of gendered laws and the need for gender neutrality, misuse of gendered laws and the need for gender neutrality, judicial initiatives, legal reforms, policy recommendations, and comparative perspectives and the conclusion.

## **Constitutional Framework and its mandate of equality**

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<sup>5</sup> NO. 45 OF 2023

<sup>6</sup> NO. 46 OF 2023

<sup>7</sup> NO. 47 OF 2023

<sup>8</sup> <https://www.juscorpus.com/gender-neutrality-of-maintenance-laws/> (visited on April 2<sup>nd</sup> 2025)

<sup>9</sup> Gender Bias in the Criminal Justice System: Analyzing the Treatment of Female Offenders in India by Kajal Tyagi <https://www.ijfmr.com/papers/2024/6/31306.pdf>

The Indian Constitution is the bedrock of the country's legal and political system. It guarantees fundamental rights to all citizens, irrespective of gender, and provides a robust framework for challenging discriminatory practices. Article 14 ensures equality before the law and equal protection under the law. This provision is central to the idea of substantive equality, which goes beyond formal monotony to address structural disadvantages faced by marginalized groups<sup>10</sup>.

Article 15(1) explicitly prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Importantly, Article 15(3) empowers the state to make special provisions for women and children, recognizing the need for affirmative action to correct historical injustices. This has been the constitutional basis for several gender-specific laws aimed at protecting women from violence and exploitation<sup>11</sup>.

Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the right to dignity, privacy, and bodily autonomy. In *Justice K.S. Puttaswamy v. Union of India*<sup>12</sup>, the Court affirmed that privacy is intrinsic to life and liberty, laying the groundwork for recognizing gender identity and sexual orientation as protected aspects of individual autonomy.

Despite these existing constitutional safeguards, the criminal justice system often falls short in translating these rights into reality. The gap between constitutional ideals and legal practice is particularly evident in the treatment of gender-based violence, the exclusion of non-binary identities from legal recognition, and the persistence of gender stereotypes in judicial reasoning.

## **Gender-Specific Provisions in Indian Criminal Law and Their Implications**

The Indian Penal Code (IPC), enacted in 1860<sup>13</sup>, was drafted during a time when Victorian morality and colonial attitudes toward gender heavily influenced legal thinking. As a result, many of its provisions reflect a binary and patriarchal understanding of gender roles. The same gender stereotype attitude has been embodied under the new laws. The Bharatiya Nayay Sanhita is

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<sup>10</sup> Article 14 of the Indian Constitution, *The Indian Constitutional Law* M. P. Jain, 9<sup>th</sup> Edition, LexisNexis.

<sup>11</sup> Article 15 *ibid*

<sup>12</sup> (2017) 10 SCC 1

<sup>13</sup> NO. 01 OF 1860

designed to protect women from violence and exploitation, they often do so by reinforcing stereotypes and excluding other gender identities from legal recognition<sup>14</sup>.

One of the most debated provisions is Section 63 of the BNS, which defines the offence of rape. The section recognizes only women as victims and men as perpetrators, thereby excluding male and transgender victims from its ambit. This gender-specific framing not only denies legal protection to a significant portion of the population but also perpetuates the myth that men cannot be victims of sexual violence. In addition, offences like Assault with intent to outrage the modesty of a women<sup>15</sup> , Sexual Harassment<sup>16</sup>, Assault with intent to disrobe a woman<sup>17</sup>, voyeurism<sup>18</sup>, stalking<sup>19</sup>, etc. create further discrimination against the men and LGBTQ+ community. The provisions limit the scope of protection to women alone, ignoring the possibility that individuals of other genders may also experience similar violations of personal dignity. This exclusion has been widely criticized by legal scholars and activists who argue for a gender-neutral approach that focuses on the nature of the act rather than the gender of the parties involved<sup>20</sup>.

The Protection of Women from Domestic Violence Act, 2005<sup>21</sup>, is another example of gender-specific legislation. While it provides comprehensive civil remedies to women facing domestic abuse, it does not extend similar protections to men or LGBTQ+ individuals in abusive relationships. This creates a need for more inclusive legal framework that recognizes the diverse forms of domestic violence experienced across the gender spectrum<sup>22</sup>.

These gender-specific provisions, though well-intentioned, often operate within a framework that views women as inherently vulnerable and men as inherently aggressive. Such assumptions not only marginalize men and transgender individuals but also fail to account for the complex realities of gender-based violence. The need of the hour is to move beyond treating just the women to be

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<sup>14</sup> <https://www.tandfonline.com/doi/full/10.1080/13545701.2018.1442582#d1e322> (visited on March 20, 2025)

<sup>15</sup> Section 74, BNS

<sup>16</sup> Section 75, BNS

<sup>17</sup> Section 76, BNS

<sup>18</sup> Section 77, BNS

<sup>19</sup> Section 78, BNS

<sup>20</sup> <https://www.juscorpus.com/critical-analysis-of-female-criminality-in-india/> visited on March 23<sup>rd</sup> 2025

<sup>21</sup> ACT NO. 43 OF 2005

<sup>22</sup> [https://www.researchgate.net/publication/348326280\\_GENDER\\_INEQUALITY\\_IN\\_INDIA](https://www.researchgate.net/publication/348326280_GENDER_INEQUALITY_IN_INDIA) visited on March 23rd 2025

the only victim of crimes and to think and adopt a more nuanced, inclusive approach that recognizes the dignity and rights of all individuals, regardless of gender<sup>23</sup>.

## **Gender Bias in Law Enforcement and the Judiciary**

Though the law focuses on legal reforms, the actual justice is experienced through how laws are interpreted and enforced. In India, gender bias is deeply entrenched in the institutions responsible for upholding criminal law, particularly the police and the judiciary. These biases not only affect the outcomes of individual cases but also influence broader patterns of access to justice, especially for those who do not conform to traditional gender roles<sup>24</sup>. For instance, the Sabarimala Temple case, where the custom of excluding women of menstruating age (10-50 years old) was challenged as discriminatory. The Supreme Court initially ruled in favor of allowing women's entry, citing Article 25 (freedom of religion) and Article 14 (right to equality). However, the ruling faced strong resistance and was later referred to a larger bench, highlighting the complex interplay between religious practices and gender equality.<sup>25</sup>

To begin with law enforcement agencies, particularly the police, are often the first point of contact for victims of crime. However, their response is frequently coloured by gendered assumptions. Male victims of sexual violence or domestic abuse, for instance, are often met with disbelief or ridicule. The prevailing notion that men cannot be victims of such crimes leads to underreporting and a lack of institutional support. Similarly, transgender individuals who approach the police with complaints of violence or harassment are often subjected to further victimization, including verbal abuse, physical assault, or outright dismissal of their grievances<sup>26</sup>.

Not just men and transgender people but sometimes even women, too, face significant challenges when interacting with law enforcement. While there has been progress in terms of setting up women's help desks and appointing female officers, many women still report feeling unsafe or unheard when lodging complaints. The police may trivialize their experiences, question their

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<sup>23</sup> <https://www.njrii.com/2022/03/gender-neutral-laws-for-domestic.html> visited on March 23<sup>rd</sup> 2025

<sup>24</sup> By Shweta Kabra, GENDER NEUTRAL LAWS- HOW NEEDFUL IN INDIA?

<http://docs.manupatra.in/newsline/article/upload/3FE150D0-E784-49BD-8328-4134C0E87955.Pdf>. Visited on 25<sup>th</sup> March 2025

<sup>25</sup> <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/> Visited on 25<sup>th</sup> March 2025

<sup>26</sup> Sexual Assault and LGBTQ Community, Human Right Campaign, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community> Visited on 25<sup>th</sup> March 2025

character, or pressure them into withdrawing complaints, especially in cases involving domestic violence or sexual assault. These responses are often rooted in patriarchal attitudes that prioritize family honor or male authority over women's rights and autonomy.<sup>27</sup>

Secondly the judiciary, though constitutionally mandated to be impartial, is not immune to gender bias. Judicial reasoning in criminal cases sometimes reflects stereotype attitudes of femininity, chastity, and morality.<sup>28</sup> For example, courts have in the past questioned the credibility of rape survivors based on their sexual history or attire, despite clear legal prohibitions against such reasoning.<sup>29</sup> In other instances, women who do not conform to traditional roles such as those accused of violent crimes or those who assert their sexual autonomy are judged more harshly than their male counterparts.<sup>30</sup>

Conversely, men who are victims of gender-based violence or who seek protection under the law may find little sympathy in the courtroom. The lack of gender-neutral provisions in key statutes means that their experiences are often rendered invisible. Even when such cases are brought before the courts, the absence of precedent and the influence of societal norms can result in dismissive or inadequate judgments.<sup>31</sup>

The cumulative effect of these biases is a criminal justice system that fails to deliver equal protection to all citizens. It makes the law narrow as it is based on outdated gender norms rather than the lived realities of individuals. Addressing this problem requires not only legal reform but also a cultural shift within institutions and an attitude of gender sensitivity, accountability mechanisms for discriminatory behavior, and increased representation of women and LGBTQ+ individuals in the police and judiciary are essential steps toward a more equitable system.<sup>32</sup>

### **Intersection of Caste, Class, and Socio-Economic Dimensions of Gender Discrimination**

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<sup>27</sup> ibid

<sup>28</sup> See <https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-victim-invited-trouble-responsible-grants-bail-accused-raping-college-student-289035>

<sup>29</sup> See order 430943, the Court of Session, Kozhikode Division, Kerala. (<https://www.livelaw.in/columns/sexually-provocative-dress-remark-in-bail-order-a-case-of-judicial-stereotyping-206929>)

<sup>30</sup> See J\_2013\_3\_SCC\_462\_judgebasavaraj\_gmailcom\_20250727\_234239\_1\_14.pdf., Sexual Violence is Preventable, Centre for disease control and prevention, <https://www.cdc.gov/injury/features/sexual-violence/index.html>

<sup>31</sup> See Rajesh Sharma v. State of U. P., (2017)3 SCC 821.

<sup>32</sup> ibid

Gender discrimination has been deeply rooted in the Indian society. Sometimes this discrimination in favour of some gender and goes against the other forms of gender and vice versa in few cases. As India has a unique society with variety of castes, classes, etc. In India gender discrimination in criminal justice system cannot be completely understood without examining its intersection with these axes of marginalization, particularly caste, class, and socio-economic status. These overlapping identities further increase the vulnerabilities of individuals, especially women and transgender persons from marginalized communities, and create further barriers to justice.<sup>33</sup>

Dalit and Adivasi women, for instance, face a double burden of discrimination, first on account of their gender, and second due to their caste identity. The best instance here is *Tukaram v. State of Maharashtra*<sup>34</sup> popularly known as Mathura's case where an Adivasi girl was raped by the two police constables by coercion. Crimes against Dalit women, including sexual violence, are often perpetrated with impunity, particularly in rural areas where caste hierarchies remain deeply entrenched. Another instance would be *Vishaka's case* where Banwaridevi, a woman belonging to a lower class in Rajasthan was brutally gang raped by men belonging to upper class at her workplace during the working hours of the office and still nobody rescued here. The 2020 Hathras gang rape case<sup>35</sup>, in which 19 years old dalit woman was brutally gang raped and later died from her injuries, brought national attention to the systemic failures in protecting marginalized women. Despite the existence of special laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, enforcement remains weak, and victims often face intimidation, social ostracism, and institutional apathy.

Economic status further exacerbates these challenges. In a poor family which cannot afford to educate all children, a male child is preferred to be educated by the parents than the female child. Though a woman may work and earn, her financial decisions are taken by the male member. This shows existence of gender discrimination in economic aspects.

Transgender persons, despite the recognition of their rights in the *NALSA v. Union of India*<sup>36</sup> judgment, continue to face systemic exclusion and violence. Many are forced into begging or sex

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<sup>33</sup> Gender Bias in the Criminal Justice System: Analyzing the Treatment of Female Offenders in India by Kajal Tyagi <https://www.ijfmr.com/papers/2024/6/31306.pdf>

<sup>34</sup> *Tukaram v. State of Maharashtra* (Mathura Rape Case), AIR 1979 SC 185.

<sup>35</sup> See J\_2020\_10\_SCC\_694\_judgebasavaraj\_gmailcom\_20250728\_115028\_1\_13.pdf ([https://equalitynow.org/news\\_and\\_insights/landmark\\_cases\\_of\\_cbsv\\_1985\\_2020/](https://equalitynow.org/news_and_insights/landmark_cases_of_cbsv_1985_2020/))

<sup>36</sup> National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438.

work due to lack of employment opportunities, making them more vulnerable to police harassment and criminalization. The Transgender Persons (Protection of Rights) Act, 2019, has been criticized for failing to provide adequate safeguards against discrimination. In *Supriyo@Supriya Chakraborty & Anr. v. Union of India*, the Supreme Court upheld the validity of the Special Marriage Act, 1954, but ruled that the right to marry is not a fundamental right for queer persons.<sup>37</sup>

These intersecting forms of discrimination highlight the limitations of legal reform in addressing gender bias in criminal law. It does not take into account the diverse and layered experiences of individuals. Legal provisions must be tailored to address the specific vulnerabilities of marginalized groups, and institutional reforms must prioritize inclusivity, representation, and accountability.

### **Misuse of Gendered Laws and the need for Gender Neutrality**

The introduction of gender-specific laws in India, particularly those aimed at protecting women from violence and exploitation, has been a significant milestone in the pursuit of gender justice. Laws such as Sections 85 and 86 of the BNS, the Protection of Women from Domestic Violence Act, 2005, and provisions addressing sexual harassment and dowry-related offences were enacted in response to the systemic and widespread abuse faced by women. However, over time, these laws have also become the subject of abuse by the women and therefore the need for gender-neutral alternatives.<sup>38</sup>

Section 85 and 86 of BNS<sup>39</sup> (corresponds to section 498A of IPC) criminalizes cruelty by a husband or his relatives toward a wife, has been at the center of this controversy. While the provision was introduced to address the alarming rise in dowry deaths and domestic violence, critics argue that

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<sup>37</sup> NAVIGATING THE PATH TO EQUALITY: THE LANDMARK CASE OF SUPRIYO V. UNION OF INDIA AND THE FUTURE OF LGBTQIA+ RIGHTS <https://share.google/dlch90MLZjEnDt9LH>

<sup>38</sup> By Arjit Mishra, Gender Neutral Rape Laws: Need of the Hour, Criminal Law Blog

<https://criminallawstudiesnluj.wordpress.com/2020/05/01/gender-neutral-rape-laws-need-of-the-hour/>

<sup>39</sup> Bharatiya Nyaya Sanhita, 2023, Section 85- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Section 86- For the purposes of section 85, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

it has occasionally been misused in matrimonial disputes. The Supreme Court, in Arnesh Kumar v. State of Bihar<sup>40</sup> and Rajesh Sharma v. State of U.P.<sup>41</sup>, acknowledged concerns about misuse and issued guidelines to prevent arbitrary arrests under this section 498A IPC (now Sections 85 and 86 BNS). However, the Court also emphasized that the possibility of misuse should not be a ground to dilute the law's protective intent. Though the overwhelming majority of complaints are genuine and reflect deep-seated patterns of abuse but the empirical studies suggest that while false cases constitute a small fraction of the total, but they still exist.

There is a growing recognition of the need for gender-neutral laws that acknowledge the experiences of all individuals, regardless of gender identity. The current legal framework often excludes male and LGBTQ+ victims of domestic violence, sexual assault, and harassment, leaving them without adequate legal remedies. This exclusion not only violates the principle of equality before the law but also reinforces harmful stereotypes about masculinity and victimhood.<sup>42</sup>

Several legal scholars and activists have advocated for reforming existing laws to make them gender-neutral in language and application. For instance, redefining rape under Section 63 BNS to include all genders, or extending the protections of the Domestic Violence Act to male and transgender victims, would be steps toward a more inclusive legal system. Such reforms would not dilute the protections available to women but would expand the scope of justice to encompass all victims of abuse.

The challenge lies in striking a balance between addressing the historical and structural disadvantages faced by women and ensuring that the law does not become exclusionary or discriminatory in the opposite direction. A nuanced, reality-based approach is essential, one that recognizes the gender-based violence while also upholding the constitutional promise of equality and non-discrimination.

## **Judicial initiatives**

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<sup>40</sup> Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

<sup>41</sup> Rajesh Sharma v. State of U.P. (2018) 10 SCC 472/ (2017) 9 S. C. R. 529.

<sup>42</sup> Sexual Assault and LGBTQ Community, Human Right Campaign <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

In a landmark judgement of *Vishaka v. State of Rajasthan*<sup>43</sup> Laid the foundation for addressing sexual harassment in the workplace. The Court framed the *Vishaka Guidelines*, recognising sexual harassment as a violation of fundamental rights under Articles 14, 15, and 21. It filled the legislative vacuum until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In *Joseph Shine v. Union of India*<sup>44</sup>, the Court struck down Section 497 of the IPC, which criminalized adultery only for men, as unconstitutional. It held that the law was based on archaic notions of male dominance and violated Articles 14, 15, and 21. This judgment was a significant step toward gender neutrality in criminal law. In *Navtej Singh Johar v. Union of India*<sup>45</sup>, in this historic verdict, the Court decriminalized consensual homosexual acts by reading down Section 377 of the IPC. It emphasized the right to dignity, privacy, and equality for LGBTQ+ individuals, reinforcing that criminal law must not discriminate based on gender identity or sexual orientation. In *National Legal Services Authority (NALSA) v. Union of India*<sup>46</sup>, the Court recognized transgender persons as a third gender and affirmed their fundamental rights under the Constitution. It directed the government to ensure legal recognition and protection, including under criminal laws, thus expanding the scope of gender justice. In the present ongoing case of *Grace Banu v. Union of India*<sup>47</sup>, the challenge is to the Transgender Persons (Protection of Rights) Act, 2019, for failing to uphold the right to self-determined gender identity. It raises critical questions about how criminal laws and state policies affect transgender individuals.

### **Legal Reforms, Policy Recommendations, and Comparative Perspectives**

The persistent gender bias in Indian criminal laws and their enforcement underscores the urgent need for comprehensive legal and institutional reforms. While judicial interventions have played a pivotal role in advancing gender justice, sustainable change requires legislative action, policy innovation, and a shift in societal attitudes. In *Supriyo Chakraborty and Anr. V. Union of India*<sup>48</sup>, the Supreme Court held that, it is for the parliament to enact and amend laws i.e., the Special

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<sup>43</sup> *Vishaka v. State of Rajasthan*, (1997)6 SCC 241.

<sup>44</sup> *Joseph Shrine v. Union of India*, (2019)3 SCC 39.

<sup>45</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>46</sup> *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 SCC 438.

<sup>47</sup> *Grace Banu v. Union of India*, W. P. (C) No. 406 of 2020.

<sup>48</sup> *Supriyo Chakraborty and Anr. V. Union of India*, Writ Petition (Civil) No. 1011 of 2022, NAVIGATING THE PATH TO EQUALITY: THE LANDMARK CASE OF SUPRIYO V. UNION OF INDIA AND THE FUTURE OF LGBTQIA+ RIGHTS <https://share.google/ajuJAzlPB2dulYAk>.

Marriage Act to include marriage between homosexuals. Judiciary cannot legislate. Law making is exclusive domain of the legislature.

One of the foremost reforms needed is the introduction of gender-neutral language in criminal statutes. Section 63 of BNS<sup>49</sup>, which currently defines rape in gender-specific terms, must be amended to recognize that individuals of any gender can be victims or perpetrators of sexual violence. This would not only align the law with constitutional principles of equality but also ensure that male and transgender victims are not excluded from legal protection. Several countries, including the United Kingdom and Canada, have already adopted gender-neutral definitions of sexual offences, focusing on the nature of the act rather than the gender of the parties involved.<sup>50</sup>

In addition to statutory reform, institutional changes are essential to address the systemic biases that pervade law enforcement and the judiciary. Police officers and judicial personnel must undergo regular training on gender sensitivity, unconscious bias, and the rights of LGBTQ+ individuals. The programs should be designed to foster empathy and awareness. Furthermore,

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<sup>49</sup> A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—
  - (i) against her will;
  - (ii) without her consent;
  - (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
  - (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
  - (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;
  - (vi) with or without her consent, when she is under eighteen years of age;
  - (vii) when she is unable to communicate consent.

*Explanation 1.*—For the purposes of this section, “vagina” shall also include *labia majora*.

*Explanation 2.*—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

*Exception 1.*—A medical procedure or intervention shall not constitute rape.

*Exception 2.*—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

<sup>50</sup> By Jai Vipra, A CASE FOR GENDER-NEUTRAL RAPE LAWS IN INDIA, file:///C:/Users//286\_case-for-gender-neutral-rape-laws-in-india\_jaai-vipra.pdf

increasing the representation of women and gender-diverse individuals in the police force, prosecution services, and judiciary can help create a more inclusive and responsive justice system.<sup>51</sup>

Another critical area of reform is the expansion of legal aid and support services for marginalized groups. Victims of gender-based violence, particularly those from Dalit, Adivasi, or economically disadvantaged backgrounds, often lack access to competent legal representation and psychosocial support. Strengthening the infrastructure of legal aid clinics, establishing dedicated support centers for LGBTQ+ individuals, and ensuring the availability of trauma-informed services can significantly improve access to justice.<sup>52</sup>

Public awareness campaigns also play a vital role in challenging gender stereotypes and promoting legal literacy. These campaigns should target not only potential victims and offenders but also the broader community, including educators, employers, and religious leaders. By fostering a culture of respect, consent, and equality, such initiatives can help shift societal norms and reduce the incidence of gender-based violence.

India can also draw inspiration from International Human Rights Instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity. These frameworks provide normative guidance for states to eliminate gender-based discrimination and uphold the rights of all individuals, regardless of gender identity or expression.<sup>53</sup>

The Supreme Court of India has taken numerous steps to eliminate gender bias in criminal laws by striking down discriminatory provisions and promoting more inclusive interpretations. For instances, it outlawed the practice of instant triple talaq<sup>54</sup>, declared adultery laws unconstitutional for treating women as property<sup>55</sup>, decriminalized homosexuality<sup>56</sup>, released a Handbook on

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<sup>51</sup> Sexual Assault and LGBTQ Community, Human Right Campaign, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

<sup>52</sup> Dr.Nagaraju Kilaru, “*GENDER INEQUALITY IN INDIA*”, RESEARCHGATE (Dec. 09,2020), [https://www.researchgate.net/publication/348326280\\_GENDER\\_INEQUALITY\\_IN\\_INDIA](https://www.researchgate.net/publication/348326280_GENDER_INEQUALITY_IN_INDIA)

<sup>53</sup> Gender Bias in the Criminal Justice System: Analyzing the Treatment of Female Offenders in India Kajal Tyagi <https://www.ijfmr.com/papers/2024/6/31306.pdf>

<sup>54</sup> Shayara Bano v. Union of India, (2017)9 SCC 1.

<sup>55</sup> Joseph Shrine v. Union of India, (2019)3 SCC 39.

<sup>56</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

Combating Gender Stereotypes<sup>57</sup> to guide judges and lawyers to transform from patriarchal language and reasoning. The Court also ruled that the gender of a victim should not be an aggravating factor in sentencing, rejecting the notion that the loss of a male child is more severe than that of a female<sup>58</sup>. However, significant gaps remain. Marital rape is still not criminalized, and many sexual offence laws continue to define victims exclusively as women, excluding male and LGBTQ+ victims. To truly eliminate gender bias, reforms must include gender-neutral definitions of sexual crimes, recognition of male and non-binary victims, and stronger implementation of workplace harassment laws that protect all genders.<sup>59</sup>

## Conclusion

The Indian criminal justice system stands at a critical juncture. While the country has made commendable progress in recognizing and addressing gender-based violence, the legal framework continues to reflect a binary and patriarchal worldview that excludes many from its protective ambit. The analysis across the preceding sections reveals that gender discrimination is not merely a matter of outdated statutes—it is a systemic issue that permeates the drafting, interpretation, and enforcement of criminal laws.<sup>60</sup>

From the gender-specific definitions of sexual offences to the exclusion of male and transgender victims in domestic violence legislation, the law often fails to reflect the existing realities of diverse individuals. These exclusions are compounded by institutional biases within law enforcement and the judiciary, where stereotypes and societal norms frequently influence the treatment of victims and accused persons alike. The intersection of gender with caste, class, and socio-economic status further deepens these disparities, leaving the most vulnerable with the least access to justice.

The need of the hour is to have balanced laws which are gender neutral laws. Such gender-neutral laws do not reject protection to the women but it creates a demand for a legal system that recognizes and responds to the full spectrum of human experience irrespective of their gender.

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<sup>57</sup> <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/01/2024012544.pdf>

<sup>58</sup> <https://www.scobserver.in/journal/supreme-court-review-2023-gender-discrimination-and-personal-liberty/>

<sup>59</sup> <https://www.juscorpus.com/indian-laws-gender-stereotypes-a-critical-examination-of-persistent-biases-and-forward-looking-reforms/>

<sup>60</sup> Jus Corpus, Critical Analysis of Female Criminality in India (2021), available at <https://www.juscorpus.com/critical-analysis-of-female-criminality-in-india/>

Ultimately, the pursuit of gender justice is not a zero-sum game. Expanding legal protections to include all genders does not diminish the rights of women—it strengthens the foundation of equality and dignity for everyone. The Indian Constitution envisions a society where justice is not contingent on one's gender, caste, or class. Realizing that vision requires courage, compassion, and an unwavering commitment to reform.<sup>61</sup>

As India continues to evolve socially and legally, the criminal justice system must keep pace. Only then can it truly serve as a guardian of rights and a beacon of justice for all.

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<sup>61</sup>Gender Bias in the Criminal Justice System: Analyzing the Treatment of Female Offenders in India Kajal Tyagi, <https://www.ijfmr.com/papers/2024/6/31306.pdf>