

BEYOND GENDERED PROTECTION: REASSESSING THE NEED FOR GENDER-NEUTRAL LAWS IN INDIA THROUGH CONSTITUTIONAL PRINCIPLES AND JUDICIAL TRENDS

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ABSTRACT

The debate surrounding gender-neutral laws in India raises fundamental questions concerning constitutional equality, substantive justice, individual dignity and the scope of criminal liability. Indian legislation has historically incorporated gender-specific protections to address structural discrimination and gender-based violence. However, the persistence of gender-specific definitions of certain offences has generated concerns regarding the legal recognition of male and transgender victims, the scope of protection available to non-binary persons, and the relationship between protective legislation and equality before the law. The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), alongside contemporary judicial developments, provides a significant opportunity to reassess the adequacy of the existing framework.

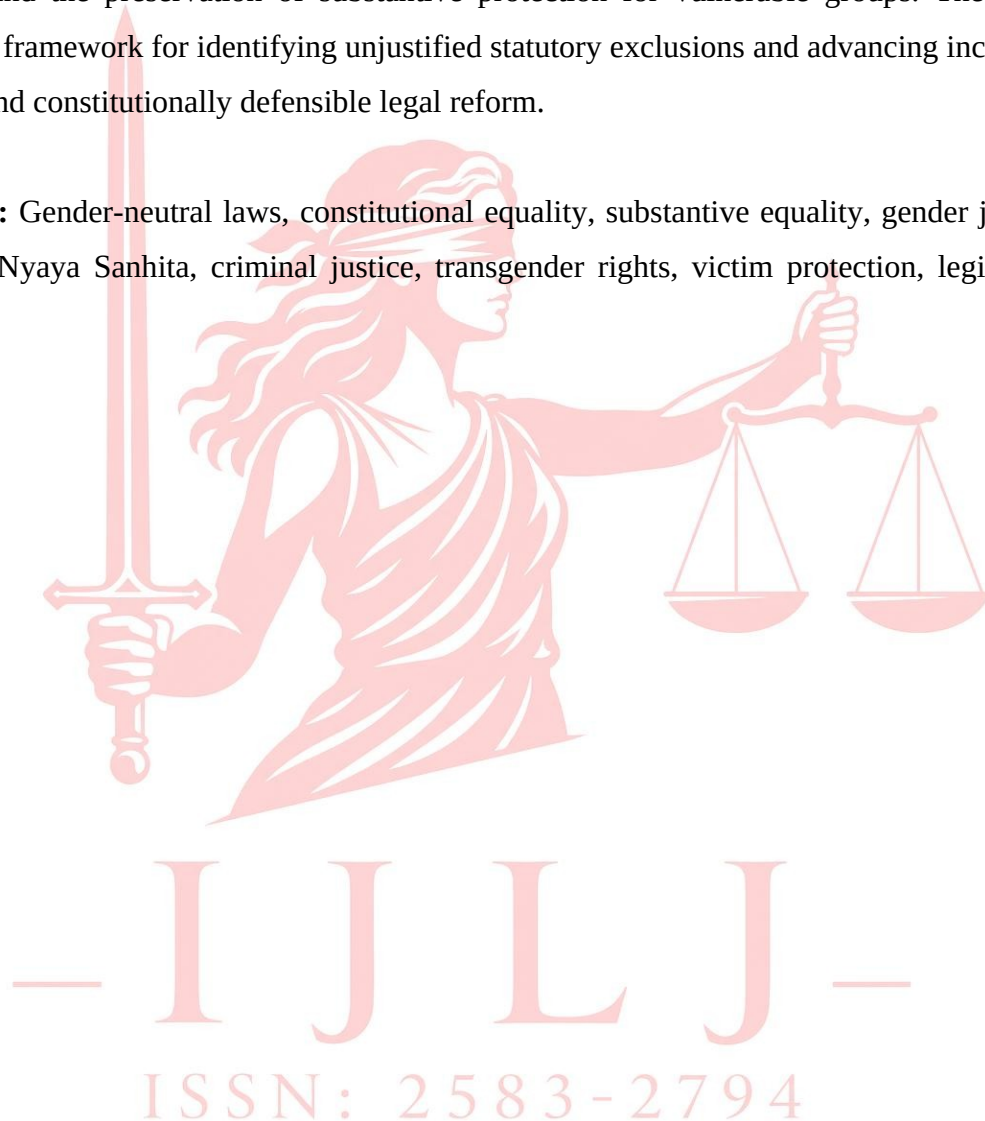
This paper examines the constitutional foundations of gender neutrality under Articles 14, 15 and 21 of the Constitution of India and analyses selected provisions of the BNS, the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and the Protection of Children from Sexual Offences Act, 2012. It critically evaluates judicial developments in *National Legal Services Authority v. Union of India*, *Navtej Singh Johar v. Union of India*, *Hiral P. Harsora v. Kusum Narottamdas Harsora*, *Joseph Shine v. Union of India* and *Janshruti (People's Voice) v. Union of India*. Particular attention is given to the tension

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between inclusive legal recognition and the continuing justification for special measures addressing gender-based disadvantage.

The paper adopts a doctrinal and analytical methodology, supplemented by relevant empirical scholarship, to argue that gender neutrality should not be understood as the universal removal of gender-specific protections. Instead, it should operate as a context-sensitive legislative principle guided by the nature of the harm, constitutional justification, equality of access to remedies and the preservation of substantive protection for vulnerable groups. The paper proposes a framework for identifying unjustified statutory exclusions and advancing inclusive, effective and constitutionally defensible legal reform.

Keywords: Gender-neutral laws, constitutional equality, substantive equality, gender justice, Bharatiya Nyaya Sanhita, criminal justice, transgender rights, victim protection, legislative reform.



Introduction

The principle of equality before the law is a foundational commitment of the Indian constitutional order. Nevertheless, the practical realisation of equality frequently requires the law to distinguish between different social circumstances, forms of vulnerability and patterns of discrimination. Indian legislation reflects this complexity. Several laws have been enacted specifically to address violence against women, discrimination in employment, dowry-related abuse and other forms of gender-based disadvantage. At the same time, the development of constitutional jurisprudence concerning dignity, autonomy and gender identity has raised questions about whether particular statutory classifications continue to provide adequate protection to everyone affected by comparable forms of harm.

The debate over gender-neutral laws must therefore be understood as a question of both inclusion and justification. On one hand, a gender-specific offence may fail to recognise certain victims whose experiences fall outside the statutory definition. On the other, removing gender-specific safeguards without considering structural inequalities may weaken protections developed in response to historically entrenched discrimination. The central issue is not whether gender should always be legally irrelevant, but whether a gender classification is justified in the context of a particular offence, remedy or protective measure.

The enactment of the Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code, 1860, with effect from 1 July 2024, provides an important contemporary setting for this inquiry. The BNS retains a gender-specific definition of rape under Section 63, while other offences and provisions adopt broader formulations. The legislative framework consequently presents a mixed approach rather than a uniform commitment to either gender-specific or gender-neutral criminalisation. The Government has also identified certain provisions concerning offences against women and children as having been made gender-neutral, demonstrating that different forms of neutrality can coexist with targeted protection.²

Judicial developments have further complicated the debate. In *National Legal Services Authority v. Union of India*,³ the Supreme Court recognised the constitutional rights of transgender persons and affirmed the importance of gender identity. In *Navtej Singh Johar v. Union of India*,⁴ the Court emphasised dignity, autonomy and constitutional protection against discrimination in the context of consensual same-sex relations. In *Hiral P. Harsora v. Kusum*

² Ministry of Home Affairs, Government of India, New Criminal Laws, Press Information Bureau (Dec. 10, 2024).

³ *National Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India)

⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

Narottamdas Harsora,⁵ it removed the words “adult male” from the definition of respondent under the Protection of Women from Domestic Violence Act, 2005. These decisions demonstrate that gender-inclusive interpretation may advance constitutional protection without necessarily requiring every protective statute to become universally gender-neutral.

More recently, in *Janshruti (People’s Voice) v. Union of India*,⁶ the Supreme Court considered a petition seeking gender-neutral legislation and guidelines concerning domestic violence and harassment complaints, including a challenge involving the former Section 498A of the Indian Penal Code. The Court declined to grant the relief sought. The order is important as a contemporary judicial development, although it should not be interpreted as a comprehensive determination that gender-neutral legislation is constitutionally impermissible or unnecessary.

This paper argues that the Indian legal framework requires a principled reassessment of gender classifications rather than a blanket transition to gender-neutral laws. Such reassessment must distinguish between the recognition of victims, the attribution of liability and the availability of remedies. It must also consider whether gender-specific measures remain justified by evidence of structural disadvantage and whether comparable forms of harm are left inadequately addressed.

Constitutional foundations of gender-neutral laws



Fig 1: Major Constitutional provisions for gender-neutral laws

Article 14 guarantees equality before the law and equal protection of the laws. It does not prohibit every legislative classification. Indian constitutional jurisprudence recognises that legislation may distinguish between categories of persons if the classification is founded on an intelligible differentia and bears a rational relationship to the objective sought to be achieved.

⁵ Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165 (India).

⁶ Janshruti (People’s Voice) v. Union of India, 2025 INSC 536 (India) (Apr. 15, 2025).

In the context of gender-neutral laws, the relevant inquiry is whether a gender-based distinction has a legitimate and constitutionally defensible purpose. A provision that addresses a demonstrable pattern of gender-based violence may rest on considerations different from a provision regulating conduct that causes comparable harm irrespective of the victim's gender. The constitutional analysis must therefore consider the nature of the offence, the legislative objective and the consequences of inclusion or exclusion.

For example, the fact that a particular offence is disproportionately experienced by women may support the adoption of targeted protective measures. It does not, without further analysis, establish that every person outside the statutory category should be denied all legal recognition or remedies for comparable conduct. Equally, the existence of an excluded category does not automatically render a gender-specific offence unconstitutional.

The question is one of justification. A gender classification should be assessed in relation to the harm being regulated and the purpose of the particular provision, rather than on an assumption that either universal neutrality or universal gender specificity is inherently constitutionally superior.

Secondly, Article 15 prohibits specified forms of discrimination, including discrimination on grounds of sex. Article 15(3), however, expressly permits the State to make special provisions for women and children. This provision recognises that formal equality may be insufficient where social and economic conditions create unequal opportunities or heightened vulnerability.

Article 15(3) is therefore central to the debate. It prevents the constitutional equality principle from being reduced to a demand for identical statutory treatment in all circumstances. Laws addressing dowry-related abuse, domestic violence and workplace sexual harassment may be defended as measures intended to respond to particular forms of gender-based disadvantage. Nevertheless, the existence of Article 15(3) does not eliminate the need to examine how protective measures are designed. A legislative provision may pursue a valid protective objective while leaving a distinct form of harm inadequately addressed. The appropriate response may be to supplement the existing law with an additional offence or remedy rather than abolish the targeted protection.

The distinction between special protection and unjustified exclusion is therefore essential. Gender neutrality should be evaluated as a means of improving legal coverage, not as an automatic rejection of affirmative protective measures.

Lastly, Article 21 protects life and personal liberty. The Supreme Court's jurisprudence has interpreted this guarantee to encompass important aspects of dignity, privacy and personal

autonomy. These principles have considerable relevance to gender neutrality because legal recognition affects an individual's ability to seek protection, report violence and participate in the justice system without having their identity or experience dismissed by restrictive assumptions.

In *National Legal Services Authority v. Union of India*, the Court recognised transgender persons' right to self-identify their gender and affirmed their constitutional rights. The judgment challenges legal approaches that assume every individual fits within a rigid male-female classification based solely on sex assigned at birth.

In *Navtej Singh Johar* case, the Court read down Section 377 of the former Indian Penal Code insofar as it criminalised consensual sexual conduct between adults. The judgment affirmed dignity, privacy and autonomy while rejecting discriminatory treatment of consensual same-sex relationships.

Neither judgment establishes that every criminal offence must be gender-neutral. Their importance lies in the constitutional principles they articulate: the law must take individual dignity seriously, avoid unjustified exclusion and recognise the diversity of human identity. These principles support a critical examination of statutory provisions that deny recognition or effective remedies to particular groups.

Substantive equality and the limits of formal neutrality

Substantive equality requires attention to the social conditions in which laws operate. A formally neutral law may fail to address unequal vulnerability, barriers to reporting or institutional discrimination. Conversely, a gender-specific law may provide an important remedy to a group exposed to a distinct pattern of harm, even if comparable protection is unavailable under that particular statute to everyone else.

This approach avoids treating equality and protection as competing absolutes. It allows legislation to retain targeted safeguards while introducing additional remedies where existing legal categories create unjustified gaps.

Gender neutrality under the contemporary statutory framework

Bharatiya Nyaya Sanhita, 2023

The BNS is a central focus of the contemporary debate because it replaced the former Indian Penal Code and reorganised substantive criminal law. Although the new legislation

incorporates several changes in the treatment of offences against women and children, it does not establish a universally gender-neutral framework for sexual offences.

Section 63 defines rape through a formulation in which “a man” commits the offence against “a woman”, subject to the provision's specified acts and circumstances. Section 64 prescribes punishment for rape. This structure maintains a gender-specific definition of rape and raises questions about the legal classification of sexual violence against adult male and transgender victims.

The issue should be analysed carefully. The fact that conduct does not fall within Section 63 does not mean that all such conduct is lawful or that no other criminal provision can apply. Depending on the facts, other offences under the BNS may be relevant. The concern is whether the available offences adequately reflect the gravity and distinctive nature of the harm, and whether victims receive comparable recognition, procedures and remedies.

A further issue concerns transgender person. In October 2025, the Delhi High Court agreed to examine a public interest litigation seeking the inclusion of transgender women and children within the statutory definition of rape. Reporting on the proceedings indicated that the Bench expressed concern about whether the statutory language could be expanded through interpretation, given the principle that criminal liability must be defined by law, and sought the Union Government's response. This development illustrates the tension between constitutional inclusivity and the limits of judicial interpretation in criminal law.⁷

The proceeding must be treated as a developing legal controversy, not as a final judgment establishing a settled interpretation of Section 63. Its broader significance is that constitutional recognition of transgender identity does not automatically resolve every statutory question concerning the elements of a criminal offence. Where a legislative definition is restrictive, amendment may be necessary to provide clear and predictable protection.

The BNS also retains gender-specific provisions in areas such as cruelty within marriage. Section 84 addresses cruelty by a husband or his relatives, succeeding Section 498A of the former Indian Penal Code. The provision responds to a serious social problem and should not be evaluated solely by asking whether the offence can be applied identically to every gender. A complete analysis must consider both the continuing need to address cruelty and dowry-related abuse and the question of how other victims of intimate-partner abuse can obtain effective protection.

⁷ Sohini Ghosh, Delhi HC Seeks Centre's Response in PIL on Protection of Transgender Women, Children Under Rape Law, The Indian Express (Oct. 8, 2025).

The BNS therefore presents a mixed legislative picture. Certain provisions have broader gender-neutral application, while others retain gender-specific definitions. The appropriate question is whether each distinction remains justified by the offence's purpose and whether additional legal mechanisms are required for persons excluded from a particular provision.

Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a civil-protective statute intended to provide remedies to women facing domestic violence. Its gender-specific design reflects the legislative objective of addressing violence and inequality within domestic relationships.

Section 2(a) defines an “aggrieved person” as a woman who is, or has been, in a domestic relationship with the respondent and alleges domestic violence. The statute provides remedies including protection orders, residence orders, monetary relief and compensation, subject to its provisions.

In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) 10 SCC 165, the Supreme Court struck down the words “adult male” in Section 2(q), which had restricted the definition of respondent. The effect was to permit proceedings against female relatives and other persons who could previously fall outside the definition. The judgment is an important example of the Court removing a restrictive gender classification from the category of potential respondents without converting the Act into a universal domestic-violence statute.

This distinction is significant. The Court expanded the scope of persons who could be held accountable under the Act while preserving the statute's victim-centred focus on women. It demonstrates that gender neutrality can operate selectively: the identity of a respondent may be broadened while the protected category remains gender-specific.

The broader policy question is whether people who experience domestic violence but fall outside the PWDVA's definition of an aggrieved person should have access to an equivalent civil-protective framework. Such a question requires examination of existing criminal remedies, general civil law, the nature of domestic relationships and the practical accessibility of relief.

The appropriate reform may not be to remove the PWDVA's gender-specific protection. An alternative would be to retain that protection while considering supplementary mechanisms for other victims, with appropriate definitions, risk assessments and enforceable remedies. This would address possible gaps without assuming that every category of victim experiences domestic violence under identical social conditions.

Sexual harassment at the workplace

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly known as the POSH Act, establishes a statutory framework to prevent and redress sexual harassment of women at work. It reflects the constitutional importance of dignity and equality in employment and draws upon the principles developed in *Vishaka v. State of Rajasthan*.⁸

The POSH Act's definition of an aggrieved woman is gender-specific. Consequently, men and persons who do not fall within that definition cannot necessarily access the same statutory complaint mechanism under the Act. This does not mean that every form of workplace harassment experienced by such persons is without legal consequence. Depending on the circumstances, service rules, disciplinary mechanisms, criminal law and other remedies may be available.

Nevertheless, the existence of alternative remedies does not establish that they are equivalent in accessibility, confidentiality, expertise or effectiveness. The absence of a common statutory framework may create uncertainty for employees and institutions.

A balanced reform would preserve the POSH Act's dedicated protections for women while considering whether a complementary workplace-harassment framework should be available to all employees. Such a framework could provide clear reporting channels, impartial inquiry, protection against retaliation, confidentiality and fair-hearing guarantees.

Any extension must also avoid creating procedures that inadvertently dilute existing safeguards. The objective should be to expand access to effective redress, not to treat the historical and institutional context of sexual harassment against women as irrelevant.

Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 (POCSO) provides a useful statutory contrast because it protects children from sexual offences without restricting protection to girls. Its definitions and offence provisions are framed around a child, meaning a person below eighteen years of age.

POCSO demonstrates that a legislature can adopt gender-neutral victim protection while retaining offence-specific safeguards. It also shows that the gender of an accused need not be treated as a determinant of whether a child can be recognised as a victim of sexual abuse.

⁸ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

This approach is especially important because children may face substantial barriers to reporting abuse, regardless of gender. A gender-neutral statutory definition can ensure that comparable conduct is recognised and that access to the criminal justice process does not depend on whether the victim is a boy or a girl.

However, gender neutrality in the definition of a child does not resolve every issue concerning the implementation of POCSO. Effective protection requires trained investigators, child-sensitive procedures, timely trials, confidentiality and support services. The statute therefore illustrates both the advantages and the limits of neutrality: inclusive legal definitions are important, but they must be supported by effective institutions.

Contemporary judicial trends

Janshruti (People's Voice) v. Union of India (2025)

In *Janshruti (People's Voice) v. Union of India*, 2025 INSC 536, the Supreme Court considered a petition under Article 32 seeking directions for gender-neutral guidelines and legislation governing domestic-violence and harassment complaints. The petition also challenged the constitutionality of former Section 498A IPC, now succeeded by Section 84 BNS.

The Court declined to grant the relief sought. The order is relevant because it demonstrates that demands for comprehensive legislative neutrality must be assessed within the constitutional and institutional limits of judicial review. Courts may examine the validity of legislation, but the design of an entirely new statutory framework may require legislative deliberation, empirical assessment and consideration of competing policy objectives.

The decision should not be overstated. A refusal to grant the relief sought in a particular petition is not equivalent to a declaration that every existing gender-specific provision is constitutionally required. Nor does it preclude future legislative reform or distinct constitutional challenges supported by different grounds and evidence.

The case nevertheless highlights the importance of framing gender-neutrality arguments precisely. A challenge to a particular exclusion, a request to invalidate a protective offence and a proposal for a supplementary remedy are legally different claims. Their constitutional justification and appropriate institutional responses may also differ.

National Legal Services Authority v. Union of India (2014)

The *NALSA* judgment is a foundational authority for the constitutional recognition of transgender persons. The Supreme Court recognised the right to gender identity and directed that transgender persons be treated consistently with constitutional guarantees and applicable legal protections.

For the gender-neutrality debate, *NALSA* raises an important question: whether legislation framed around binary assumptions adequately recognises the experiences of transgender and non-binary persons. Statutory language that identifies victims exclusively as men or women may create uncertainty where the legal categories do not clearly accommodate a person's gender identity.

At the same time, the judgment should not be treated as automatically rewriting every gender-specific criminal provision. The scope of a criminal offence is governed by its statutory elements and the principle of legality. Where those elements are expressly restrictive, legislative clarification may be necessary.

The continuing relevance of *NALSA* lies in its constitutional demand for recognition and equal dignity. It supplies a framework for evaluating the effects of exclusion, even where the precise statutory remedy must be determined separately.

Navtej Singh Johar v. Union of India (2018)

In *Navtej Singh Johar*, the Supreme Court read down Section 377 IPC insofar as it criminalised consensual sexual conduct between adults. The decision marked a major development in the protection of sexual orientation, privacy and autonomy.

The judgment is relevant to gender-neutral legislation because it challenges the use of criminal law to enforce assumptions about sexuality and intimate relationships. It also reinforces the proposition that legal categories should be scrutinised where they impose stigma or unequal burdens on individuals because of their identity.

However, *Navtej Singh Johar* concerned the criminalisation of consensual conduct. It did not establish a comprehensive framework for gender-neutral sexual offences, nor did it determine the scope of every person's entitlement to protection against sexual violence. Its contribution is principally constitutional: criminal law must respect dignity and autonomy, and discriminatory assumptions require serious scrutiny.

Joseph Shine v. Union of India (2019)

In *Joseph Shine case*,⁹ the Supreme Court invalidated the adultery offence under Section 497 IPC. The provision had treated the husband as the person whose marital interests were protected through criminal prosecution, while the wife's legal position reflected assumptions about marital authority and agency.

The judgment is relevant to the wider relationship between gender and criminal law. It illustrates how a provision ostensibly concerned with protecting marriage may reinforce unequal gender roles and treat women as objects of a husband's rights rather than autonomous individuals.

Nevertheless, the decision does not support the proposition that all offences should be gender-neutral. It instead shows the need to examine the purpose and operation of a particular provision, especially where its design rests on outdated assumptions about gender, consent or family relationships.

Hiral P. Harsora v. Kusum Narottamdas Harsora (2016)

The significance of *Hiral P. Harsora* lies in its treatment of perpetrator neutrality. By removing “adult male” from the definition of respondent under the PWDVA, the Court expanded the categories of persons against whom proceedings could be initiated.

The decision demonstrates that gender-neutrality reforms can be carefully targeted. The protected class under the statute remained women, but the legal system no longer presumed that domestic violence could be committed only by an adult male respondent for purposes of that definition.

The case therefore offers a useful model for evaluating other provisions: reform need not require abandoning the purpose of an existing protective law. It may instead remove a particular restriction that prevents the law from operating effectively in circumstances consistent with its objective.

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Emerging litigation concerning transgender victims of rape

The Delhi High Court proceedings reported in October 2025 concerning the scope of Section 63 BNS bring the statutory limits of gender-specific sexual offences into sharper focus. The petition sought recognition of transgender women and children within the definition of rape.¹⁰

⁹ *Joseph Shine v. Union of India* (2019) 3 SCC 39.

¹⁰ *Dr. Chandresh Jain v. Union of India*, W.P. (Crl.) No. 3274 of 2025 (Delhi High Court Oct. 8, 2025).

The reported judicial concerns included whether the wording could be expanded through interpretation and whether a change to the offence required legislative action.

The matter illustrates a fundamental tension between constitutional interpretation and criminal-law legality. Courts must interpret statutes consistently with constitutional values, but they cannot disregard the statutory elements of an offence or create criminal liability without a sufficiently clear legal basis.

The development supports a legislative recommendation: Parliament should examine whether the existing framework provides adequate and appropriately classified protection against sexual violence for transgender persons and other excluded victims. Any amendment should define the prohibited conduct, applicable consent rules, age thresholds, penalties and procedural safeguards with sufficient precision.

Because the proceedings were reported as pending at the time of the cited coverage, no final outcome should be inferred. Their relevance is that they identify a concrete question requiring authoritative legal resolution.

Empirical evidence and the limits of existing data

The case for gender-neutral laws must be informed by evidence, but available data must be interpreted with care. Official crime statistics generally record offences as defined by law and reported to police. They cannot automatically reveal the full prevalence of conduct that falls outside existing statutory definitions or is not reported to authorities.

Research published in the *Journal of Biosocial Science* in 2024 examined physical violence against husbands in India using NFHS-4 data. The study drew on a sample of 62,716 currently married women aged 15–49 and investigated reported experiences and risk factors associated with physical violence against husbands. The authors found that such experiences were not absent and identified factors including marital control, alcohol use and childhood exposure to parental violence.¹¹

The study is relevant because it challenges the assumption that physical spousal violence can occur only in one direction. However, it must not be used to claim that violence against husbands occurs at the same rate as violence against wives. Its sample, measurement method and focus on physical violence limit the conclusions that can properly be drawn from it.

Evidence concerning violence against women also remains central. Research analysing Indian NCRB data on domestic-violence-related offences documented substantial reporting and

¹¹ Aparajita Chattopadhyay et al., Prevalence and Risk Factors of Physical Violence Against Husbands: Evidence from India, 56 J. Biosoc. Sci. 391, 391–411 (2024), <https://doi.org/10.1017/S0021932023000196>

justice-system challenges, including low proportions of cases completing trial in the period examined. Such findings underscore the need to improve the quality of official data and the effectiveness of existing protections rather than simply altering statutory definitions.¹²

The correct inference from this evidence is not that gender-specific laws are unnecessary. Rather, the evidence suggests two simultaneous needs:

- To ensure that established forms of gender-based violence receive effective attention and
- to improve the recognition and measurement of other forms of victimisation.

Arguments for and against gender-neutral laws

S. No.	Arguments Supporting Gender Neutrality	Arguments Cautioning Against Universal Neutrality
1.	Inclusive Recognition of Victims: Gender-neutral laws recognise victims of different genders who may suffer comparable harm and ensure access to appropriate legal remedies.	Structural Inequality: Women continue to face gender-based violence and systemic disadvantages. Universal neutrality may weaken targeted protection if adequate safeguards are not maintained.
2.	Consistency with Constitutional Dignity: Recognition of transgender identity and individual autonomy supports the removal of unnecessary gender-based exclusions.	Different Patterns of Harm: The prevalence, circumstances and consequences of offences may differ across genders, requiring context-sensitive legal protection.
3.	Conduct-Based Criminal Responsibility: Criminal liability should, where appropriate, depend on the conduct, intention and circumstances rather than assumptions about gender.	Risk of Weakening Specialised Remedies: Replacing specialised laws with general legislation may reduce access to trained personnel, dedicated procedures and targeted support services.
4.	Improved Access to Remedies: Inclusive civil and workplace mechanisms can extend protection to individuals excluded from existing statutory categories and establish clear procedures for reporting and inquiry.	Procedural Fairness and Misuse Concerns: Legal reforms must preserve fair investigation, due process and protection against arbitrary accusations, irrespective of the gender of the parties involved.
5.	More Reliable Evidence and Policy: Inclusive data collection can reveal underreporting, identify different patterns of victimisation and support evidence-based policymaking.	Limits of Judicial Interpretation: Courts cannot always expand restrictive statutory definitions without altering the elements of an offence. Legislative reform may be necessary.
6.	Equal Legal Recognition: Gender-neutral provisions can promote equal recognition before the law where gender is not relevant to the nature of the harm.	Need for Substantive Equality: Identical legal provisions may not adequately address unequal social conditions. Targeted protections may remain necessary to achieve meaningful equality.

Table: Arguments For and Against Gender-Neutral Laws in India

¹² Rashmi Singh et al., Domestic Violence in Indian Women: Lessons from Nearly 20 Years of Surveillance, 54 BMC Women's Health 95 (2022), <https://doi.org/10.1186/s12905-022-01703-3>.

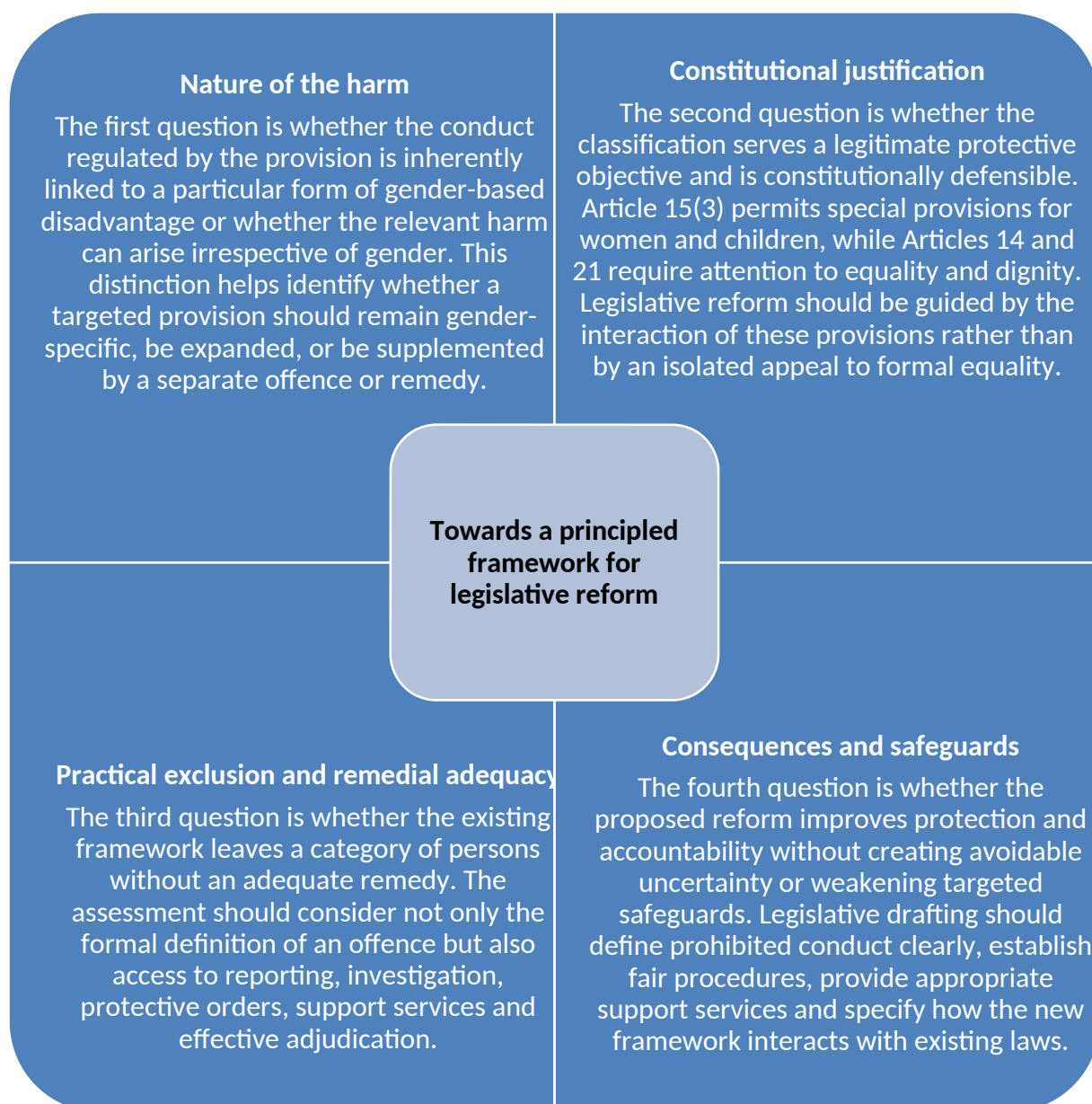


Fig 2: Principled framework for legislative reform

Recommendations

First, Parliament should undertake a systematic review of gender-specific offences and remedies. The review should identify the objective of each provision, the evidence supporting its classification, the persons excluded and the availability of alternative legal protection.

Second, the statutory treatment of sexual violence should be examined with particular attention to the scope of Section 63 BNS. Any amendment should clearly define the prohibited conduct, victims and perpetrators covered, consent standards, age-related

protections and applicable penalties. The drafting should be constitutionally inclusive and sufficiently precise to satisfy the principle of legality.

Third, the women-centred framework of the PWDVA should not be discarded merely in the name of neutrality. Instead, policymakers should examine whether complementary civil-protective mechanisms are needed for other victims of domestic violence. Such mechanisms should provide practical access to protection, emergency assistance and appropriate relief.

Fourth, workplace sexual-harassment policy should be reviewed to identify gaps in protection for people who do not fall within the POSH Act's definition of an aggrieved woman. A supplementary framework could provide confidential reporting, impartial investigation, protection against retaliation and procedural fairness while retaining the Act's specialised protections for women.

Fifth, official data collection should be improved. Police and justice-system records should, subject to privacy and ethical safeguards, enable more meaningful analysis of victimisation across genders, offence types and case outcomes. Researchers should be able to distinguish reported offences from prevalence estimates and identify limitations in the data.

Sixth, training should be provided to police officers, prosecutors, judicial officers and workplace inquiry bodies on gender diversity, victim-sensitive investigation and fair process. Legal recognition has limited practical value if individuals are discouraged from reporting or cannot access competent assistance.

Finally, legislative reform should involve consultation with survivors, women's organisations, transgender-rights groups, legal practitioners, researchers and institutions responsible for delivering remedies. Consultation can identify unintended consequences and help ensure that inclusive reforms are workable in practice.

Conclusion

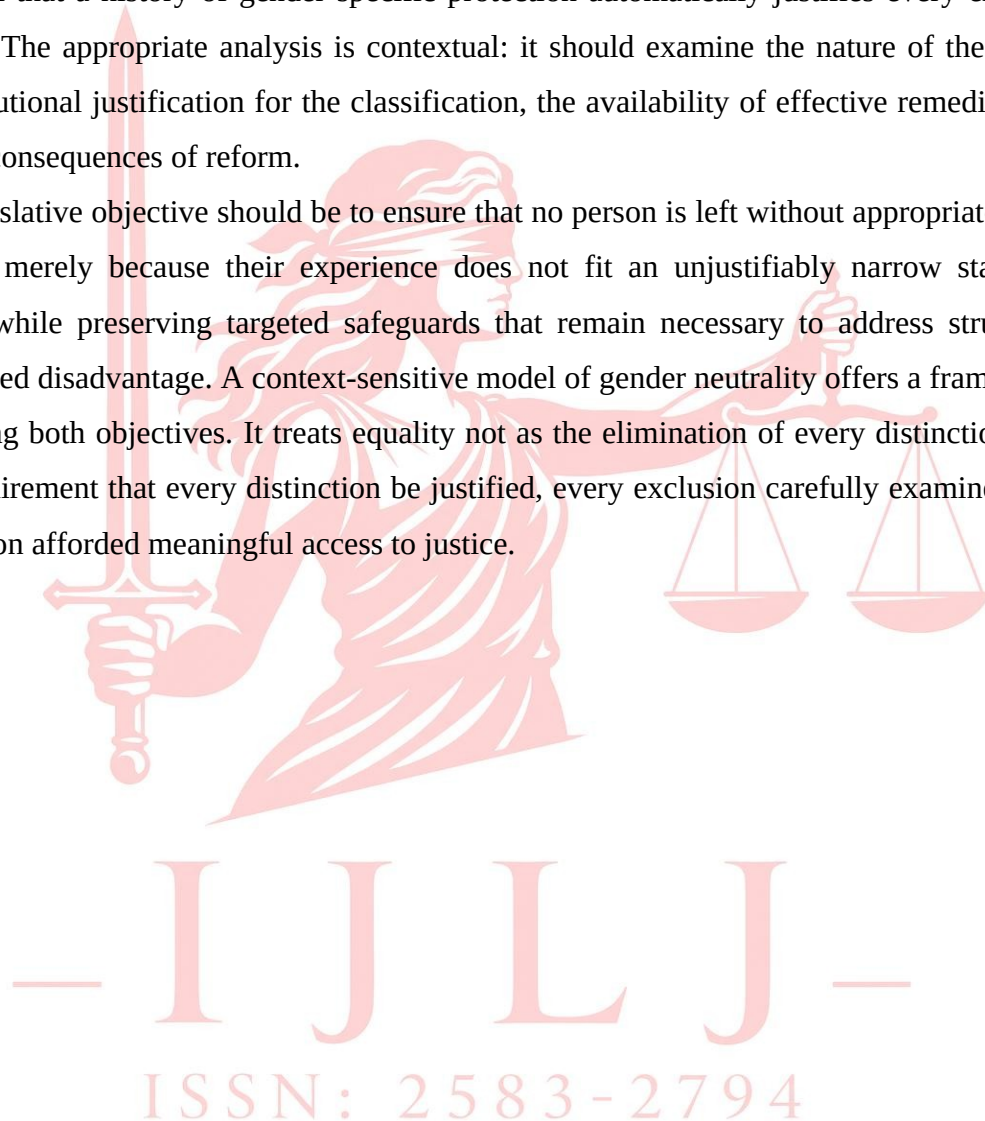
The need for gender-neutral laws in India must be examined within the broader constitutional commitment to equality, dignity and effective access to justice. The existing legal framework reflects different legislative choices: some statutes provide gender-neutral protection, while others maintain gender-specific offences or remedies designed to address particular forms of disadvantage. Contemporary judicial developments demonstrate both the possibilities and the limits of extending legal recognition through constitutional interpretation.

The decisions in *NALSA*, *Navtej Singh Johar*, *Hiral P. Harsora* and *Joseph Shine* provide important principles for examining gender identity, autonomy, equality and restrictive legal classifications. *Janshruti (People's Voice)* further illustrates that a request for comprehensive

legislative reform raises questions distinct from a challenge to the constitutionality of an individual provision. Emerging litigation concerning transgender victims of sexual violence also demonstrates the importance of clear statutory definitions and the limits of relying exclusively on judicial interpretation to expand criminal offences.

A principled approach must therefore move beyond the assumption that gender neutrality necessarily means identical treatment under every law. It must also reject the opposite assumption that a history of gender-specific protection automatically justifies every existing exclusion. The appropriate analysis is contextual: it should examine the nature of the harm, the constitutional justification for the classification, the availability of effective remedies and the likely consequences of reform.

India's legislative objective should be to ensure that no person is left without appropriate legal protection merely because their experience does not fit an unjustifiably narrow statutory category, while preserving targeted safeguards that remain necessary to address structural gender-based disadvantage. A context-sensitive model of gender neutrality offers a framework for pursuing both objectives. It treats equality not as the elimination of every distinction, but as the requirement that every distinction be justified, every exclusion carefully examined and every person afforded meaningful access to justice.



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