

## Reforming Criminal Laws Through a Gender Lens: Societal Implications and Challenges in the Indian Context

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### ABSTRACT

The researchers have tried to examine the expansion in the Indian Criminal Justice system based upon the complexities of gender inclusions leading to legislative amendments which were greatly a product of the judicial interpretations. Many new gender sensitive legislations emerged which widened the scope of existing laws that not only protected women, children and LGBTQAI+ but also addressed offences against them while granting them rights for basic human existence. However, there are several unanswered questions of gender equality which the researchers have tried to analyze through comprehensive study of the existing legislations and judicial interpretations. This paper seeks to evaluate the importance of new laws, their impact on the Indian Society considering the social, cultural and the procedural obstacles which still hinder the effective enforcement as well as the further development of gender-neutral laws in India and suggests remedies which would be helpful in bridging the gap between transformative legislations and the societal realities.

**Keywords:** Gender Justice, Criminal Law Reform, Indian Penal Code, Bharatiya Nyaya Sanhita, Sexual Violence, Gender-Based Violence, Societal Change

### 1. INTRODUCTION

There has always been an ever-evolving relationship between gender, criminal laws, rights and their complex relation with the social realities. This relationship has for ages now formed the core of debates which have led to many gender reforms in this modern era in India. The gender inclusive legislations in India are a product of the many amendments that were made to the existing laws as well as that of the transformative approach that was taken by the Apex Court of India while interpreting rights and equality. This has largely helped in designing laws as a mechanism to address gender-based offences. A great role has been played by Justice J. S. Verma Committee, 2018 Criminal amendment which enhanced the punishments related to sexual offences, 2019 Amendment to POSCO which introduced greater penalties to the offender of Child Abuse and finally the Ranbir Singh Committee constituted by the Ministry of Home Affairs in 2020 which reviewed the existing criminal legislations that were based on the age-old Victorian concepts. This committee suggested a simplified, modernized and victim centric mechanism of justice in the form of Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhinyam (BSA). These three legislations were adopted by India on 1st July 2024 as the Central Criminal Laws.

A number of new offenses were added to the legislative purview through amendments and the enactment of new laws; the penalties for already-existing offenses were strengthened; new gender-specific offenses against women were recognized; certain gender-neutral offenses were recognized; inclusive definitions of gender were established; compensatory theory was applied

through central legislation; and much more. But one cannot stop and be satisfied just at this, as the criminal legislations still need a deeper structural reassessment related to gender based offences in India.....only then would we achieve a system which is capable of delivering justice in its true sense. The present era can only be seen to be the dawn of the gender- neutral laws in India having a never seen before impact on the societal norms which the so called right thinking members of the Indian Society have evolved for themselves. While carving out these norms, these right thinking members had conveniently turned a blind eye to the sexual minorities, persons of other genders, as if they never existed among them. Among the traditional school of thought, women were always considered to be a commodity and as such were never considered eligible for any set of rights by the traditional society. Due to such beliefs, laws failed completely to even accept their existence and as such there was no mechanism made to protect the sexually marginalized group from offences against them.

## 2.HISTORICAL CONTEXT: EVOLUTION OF GENDER-SENSETIVE CRIMINAL LAWS IN INDIA

### 2.1 Victorian Mindset and its Reflection in the Indian Criminal Laws

Till 2024, Indian Penal Code (IPC) was the major criminal law in India which was the craftsmanship of Lord Macaulay. And as such was infused with the traditional Victorian mindset which now can be seen to be classic example of non- inclusive major legislation failing to address the offences against persons of all genders. This led to a divide in the society based upon sexual bias. This law being in for more than 160 years underwent many amendments to suit the needs of the ever- changing demands. Yet it proved ineffective to answer newer offences. The laws prescribed punishments but were not sensitive towards victims and hardly had any scope for reformation and compensation. After the withdrawal of East India Company from India, Britishers had brought in the IPC with the idea to rule and control Indians. Upendra Baxi had quoted that 'Indian Penal Code was structured around the State's power to rule and control than justice delivery system'<sup>1</sup>. IPC was formulated in an era which had very specific notions regarding gender and the roles that were assigned to each of the two recognized genders. It considered just two genders namely the male being offender and women being victim of crimes committed against them by men. That definitely was the true fact of then society, but changed largely with the change in the thought process with realization of the concept of rights and equality. With a shift in the concept of morals, IPC showed a clear picture of gender bias in the laws of Adultery<sup>2</sup> sexual offences against married women <sup>3</sup>same sex offences<sup>4</sup> Highlighting the Victorian concept of women being treated as a property by the husband and a confused meaning of the concept of adult consent.

### 2.2 The Judicial Interventions and Interpretations

The Indian Constitution came into force in 1950 and with this began the journey of reforms that had a great deal of impact on the criminal laws in India. The Apex Court of India intervened and widened the scope of Articles 14, 19 and 21 of the Indian Constitution, from a very narrow applicability to a progressive gender inclusive notion of equality.

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<sup>1</sup> Baxi U.(1982). The crisis of the Indian Legal System. New Delhi:Vikas Publishing House, p.243

<sup>2</sup> Joseph Shine V/S Union of India, AIR 2018 SC 4898

<sup>3</sup> Independent Thought V/S Union of India and Anr. AIR 2017 SC 4904

<sup>4</sup> Navtej Singh Johar & Ors. V/S Union of India, (2018) 10SCC

The initial phase of the Supreme Court of India from 1950 to 1970 can be understood to be a phase of narrow interpretations, where the laws were interpreted between the lines. Though laws that validated protection for women and children, were very much a part of Article 15. “Our legal system must recognize that the traditional approach to rape cases has been heavily weighted against the victim and in favor of the accused”<sup>5</sup>, was observed by Justice V.R.Krishna Iyer way back in the year 1980. The change happened in the year 1979 where people realized the loopholes that existed in the rape laws which were exposed through the Mathura Rape Case.<sup>6</sup> The case highlighted the complexities in the concepts of resistance by a woman and being habitual to sexual intercourse and presumption of consent. The acquittal given by the Supreme Court of India sparked outrage and a nationwide criticism which became a turning point which fundamentally transformed the rape laws in India. The judgement in this case led to Criminal Amendment Act, 1983 having impact on IPC and Indian Evidence Act with introduction of Section 376(2) relating to Custodial Rape which recognized public officers as offenders of the offence of rape of a woman in custody. Section 114A shifted the burden of proof from the victim to the offender to prove that the woman had consented for the sexual intercourse. This led to in camera trials, ban on character assassination and strict punishment for the offender. One can under the jurisprudential shift from focus on resistance to focus on consent, from victim being blamed to state accountability for the offence against her, from her sexual history being relevant to it being irrelevant if she complains and from non-recognition of custodial rape as an offence to it being recognized as a specific offence against a woman. This case had a long term impact and could be seen to reflect in 2013 Criminal Amendment and inclusion of victim protection as being part of Article 21 of the Indian Constitution and the three new criminal laws that came into being from 2024.

### **2.3 The turning point of 2012 for the Criminal Justice System**

The Nirbhaya rape case was the turning point as regards the laws for women. The heinousness and the brutality of the crime hit the consciousness of the common man. It forced the legislators to believe the long ongoing debate that the criminal laws needed massive change to tap the offenders and punish them. The J.S.Verma Committee was constituted to recommend key changes in the then existing legislations. The committee submitted its report in just 30 days. Many changes were incorporated which expanded the definition of Rape, recognized broader forms of sexual assault, clarified Consent as unequivocal voluntary agreement. It introduced new offences in IPC such as sexual harassment, Stalking, Voyeurism and Acid Attack. The punishments were enhanced and made more stringent by the 2018 Criminal Amendment Act. It set in modern form of victim centric procedural reforms and evidentiary reforms. The J.S.Verma Committee brought about a victim-oriented justice model. The stage was set for later reforms which reformed the POCSO by accepting digital evidence. This era saw a decisive shift towards gender-sensitive criminal jurisprudence in India with introduction of fast-track courts and police reforms. Both the 2013 and 2018 Criminal Amendments have been included in the Bhartiya Nyaya Sanhita, 2023.

## **3. ANALYSIS OF THE PRE AND POST LEGISLATIVE FRAMEWORK**

Justice J S Verma Committee made a recommendation to make the rape laws gender neutral with reference to the victim. It stated that the perpetrator was a man and the victim could be

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<sup>5</sup> Moti ram V/S State of Madhya Pradesh (1978) 4 SCC 47, pp.4-5

<sup>6</sup> Tuakaram & Anr. V/S State of Maharashtra 1979 SCC (2) 143

a person of any gender<sup>7</sup>. However, this was not accepted by the center. On a louder note, this was one inclusion that was ignored which could have taken us one step ahead with reference to gender neutral laws and a victim centric approach. BNS also maintains a gender specific victim limitation, makes no mention of marital rape. BNS in its approach is still gender restrictive in nature. Introduction of death sentence as death penalty for aggravated rape has been a subject matter of debate.

In the year 1997, in absence on a legislation, the Supreme Court of India laid down guidelines defining sexual harassment of women at workplace<sup>8</sup>. A legislation was passed in the year 2013 which incorporated the Vishaka guidelines which defined sexual harassment, set up a mechanism to deal with the internal complaints, local complaints as well as explaining the liabilities and duties of the employer. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH) being a women-specific legislation considers women only to be the aggrieved person, which means that only women can be a victim of sexual abuse at workplace. This Act definitely is a milestone at achieving protective discrimination, but fails in transformative justice. Thus, the remedy for men, transgender for sexual harassment is scattered under different sections of BNS like Criminal Intimidation, Assault, Stalking, grievous Hurt and the like. These sections under BNS address general criminal conduct and not workplace related conduct and thus shall have no internal committee to deal with the offences at workplace. This gender exclusive law is a glaring example of violation of fundamental rights under Article 14, 19 and 21 of the Indian Constitution. Though there are certain service rules and employers' contracts that do address this issue, but they are all policy based, not statutory in nature.

Domestic Violence Act, 2005 and the Dowry Prohibition Act, 1961 are yet again gender specific acts. They consider and protect only female victims. Men cannot invoke the Act as an aggrieved person. A shift was seen in the year 2016, which made the respondent gender neutral<sup>9</sup> for the offences of Domestic Violence. As regards Dowry prohibition, action can be taken against any person for demand of dowry alongside with BNS which protects married women from cruelty. Thus, these acts can be termed gender neutral as any person can be prosecuted under these acts for the offences.

The POCSO Act, 2012 is a legislation to protect children from sexual abuse and can be termed to be the first Act which is gender neutral as it creates a comprehensive framework to protect children. There is no specific gender qualification attached and as such victim is any person below 18 years of age<sup>10</sup> and accused can also be any person regardless of gender<sup>11</sup>. This Act taps upon offender of any gender, making relationship with the child irrelevant<sup>12</sup>, the word used "whoever" includes relatives, guardians, teachers, etc.<sup>13</sup> and casts stringent obligations on the offender<sup>14</sup>. The Courts have laid down that technical arguments cannot dilute the broad scope implied by "whoever"<sup>15</sup>.

<sup>7</sup> Page 439, Justice J.S.Verma Report, "the victim of sexual offences should be gender neutral, so that a person of any gender could be considered to be a victim of sexual assault....." (Verma Committee Report, p 439, Jan 2013)

<sup>8</sup> Vishaka V/S State of Rajasthan, 1997

<sup>9</sup> Hiral Harosa V/S Kusum N. Harosa

<sup>10</sup> Section 2(d) POCSO Act

<sup>11</sup> The word used in the Act is "whoever"

<sup>12</sup> Satish Ragde V/S State of Maharashtra

<sup>13</sup> State of Madhya Pradesh V/S Madanlal

<sup>14</sup> Akash Alok Srivastava V/S Union of India

<sup>15</sup> Eera V/S State (NCT of Delhi)

The concept of the age-old notions of the same sex relationship as an offence saw a great breakthrough after the landmark judgment in Navtej Singh's case,<sup>16</sup> in the year 2019 which decriminalized consensual same sex relationships. This paved the way for gender neutrality in matters of choice regarding partners. This judgment has been subjected to a lot of ridicule due to age old beliefs related to same sex relationships and the taboo cast upon it. The Transgender Act that was passed in the year 2019 gives inadequate protection for transgenders against violence as it has very weak punishments. BNS also provides protection and remedies to transgender persons.

#### 4. Revolutionary Judicial Pronouncements and their Impact

The researchers in this section wish to highlight the role played by the Hon'ble Supreme Court of India in the criminal justice system. The Apex court has time and again intervened in making criminal laws gender neutral by expanding the scope and application of the laws through massive and path breaking interpretations. It has often upheld gender specific legislations and at times extended the horizons of the same legislations to include gender minorities. The researchers have included certain landmark judgments to highlight the contributions made by the Hon'ble Supreme Court of India. The cornerstone of inclusive interpretation came to forefront when the Supreme Court recognized the transgender person as the "Third Gender"<sup>17</sup>, whereby it recognized and took cognizance of the discrimination against them for centuries. With this landmark decision, the transgenders were granted rights equal to any other individual breaking the shackles of age-old mindset of the Indian Society. "Constitutional, morality must outweigh the argument of public morality, even if it be the majoritarian view."<sup>18</sup> The Supreme Court of India recognised sexual autonomy, dignity and equality for consensual same-sex relations under Section 377 IPC<sup>19</sup>. The constitutionality of adultery law which was upheld in Yusuf Abdul Aziz and Sowmitri Vishnu V/S Union of India<sup>20</sup>, however, was later declared as being unconstitutional in the case Joseph Shine V/S Union of India,<sup>21</sup> wherein justice D.Y. Chandrachud stated that, "Section 497 is based on gender stereotypes. It treats a woman as a passive object and denies her agency."<sup>22</sup> Marital Rape has been a subject matter of controversy for decades. Full marital rape criminalization is yet to be recognised, though, Exception 2 to Section 375 IPC was read down to criminalize marital rape of minor wives who were between 15-18 years<sup>23</sup>. There has been a gradual expansion of the equality doctrine to achieve transformative and progressive constitutionalism. As the constitutional morality is so ingrained, it has repeatedly demonstrated how sensitive the Indian judiciary is to gender-based and gender-neutral legislation. The Delhi High Court has observed that law addresses sexual harassment of women only and its high time that this law be reformed and be made gender neutral to answer the newer posed questions of justice<sup>24</sup>. It highlighted the legislative gap that existed regarding the male victims. At this point it is important to note the J.S.Verma Committee observation which reads, "The

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<sup>16</sup> Supra note 4.

<sup>17</sup> National Legal Services Authority V/S Union of India (NALSA) 2014

<sup>18</sup> As stated by Justice A.S..Sikri in concurring opinion in NALSA Case

<sup>19</sup> Supra note 4.

<sup>20</sup> In this case the Supreme Court of India refused to make adultery law gender neutral, and stated that it was for the Parliament to decide and amend the law bringing forward the judicial reluctance to rewrite penal provisions.

<sup>21</sup> Supra note 2

<sup>22</sup> Justice D.Y Chandrachud in Joseph Shine V/S Union of India, Para 163

<sup>23</sup> Independent Thought V/S Union of India

<sup>24</sup> Pankaj Chaudhary V/S State (NCT Delhi)

offence of sexual assault should be gender neutral as to the victim and the perpetrator.”<sup>25</sup> This recommendation was not retained by the Parliament in the 2013 Criminal Amendment, nor does it reflect in BNS. It is interesting to note the remarks made by Former Chief Justice of India Justice Uday Lalait, “The reforms missed the chance of making the law gender neutral for sexual offences against adults. He raised a very crucial point for consideration and stated, “Now, what if the one adult is actually sort of subjected to it forcibly and without his consent?.....So therefore you have not only lost that opportunity of making it gender neutral, which the ordinance had thought of, but you have also dropped 377, which means that if a man without his consent is subjected to that kind of offence, then today where is the window to ventilate the grievance? There is none. And that to my mind is completely an incorrect idea.”<sup>26</sup> On the same note Justice Indu Malhotra had observed, “The time when wives were invisible partners in a marriage is long past.”<sup>27</sup>

### 5. Societal Impact of Gender Based Criminal Law reforms

*“A husband who murders his wife is guilty of murder. A husband who assaults his wife is guilty of grievous hurt. But a woman subjected to non- consensual sex within marriage has no remedy.”<sup>28</sup>*

Gender Based and gender sensitive criminal law reforms are part of the continuous substantive shift aligned with the spirit of equality as enshrined in the Indian Constitution. There has been a great societal impact of these legislations, particularly in the traditional patriarchal society and those institutions which have a very complex understanding of stereotypes and gender laws. Through these legislations and judicial interventions, we have been able to address violence against women as well as the other marginalized groups of the Indian Society. For Indian society it was expedient to understand that violence against marginalized groups was an offence against a society and not merely individuals. Did India need to witness a ghastly and brutal incident like the 2012 Nirbhaya Gang Rape case to bring about reforms in the criminal procedure and to introduce a criminal justice system that was more responsive to the victims and the survivors? The Criminal Amendment 2013 did raise a lot of public awareness about the need for gender-based laws in India to address the gender based violences with brutality going beyond animal behaviour. It was one of the major amendments that improved reporting of gender-based violence against women and children. This amendment and other gender sensitive laws have to a great extent reduced the stigma that was attached to sexual offences and has helped in bringing about a relief oriented criminal justice system. Dedicated specialized police helplines have increased case reporting, which proves that legal reforms can definitely improve and influence social behaviour towards such offences which destroy the very being of the individual.

Due to the many newer criminal law reforms certain marginalized groups remained unacceptable in Indian society for ages and have been now accepted to be a part of the very society we live in. Certain acts that were previously normalized due to the societal thought

<sup>25</sup> Page 413, Justice Verma Committee Report, 2013

<sup>26</sup> Excerpts from Lecture delivered by Justice Uday Lalait, Former Chief Justice of India: Male Victims Still Remediless, BNS Missed Chance To Make Rape Laws Gender Neutral on 30th September 2025, Supreme Court Bar Association, available at [www.lawchakra.in](http://www.lawchakra.in) accessed on 30.9.2025.

<sup>27</sup> Supra note 2 at, Para 14

<sup>28</sup> Former Chief Justice of India DY Chandrachud -“75 years later, marital rape still not a crime”, <http://www.indiatoday.in/india/story/dychandrachud-on-marital-rape-law-regret>, viewed on 30.8.25 at 11am.

process, have now been criminalized and certain acts that were earlier criminalized have been given a judicial recognition. Thus, when marital rape of minor wife was considered as an offence<sup>29</sup> or sexual harassment of women at workplace<sup>30</sup> surfaced as an offense with penal punishments, there was a transit that was seen in the general understanding and attitude of gender roles, autonomy as well as bodily integrity. This change was important while analysing the status of consensual same sex relations in Indian criminal jurisprudence in Navtej Singh Johar case in the year 2019. These changes have had a long-term transformation in understanding gender roles and gender relations based on autonomy of choice.

At the same time, it is important to point out the contested societal impact, where many gender specific laws are misused influenced by false cases leading to gender polarization as an understanding in the general public while discussing law and justice. The Supreme Court has stated that, section 498A was inserted with a specific intention, that being protection to married women against cruelty, yet one cannot deny that this section has been the subject of misuse. "By misuse of the provision a new legal terrorism can be unleashed."<sup>31</sup> In yet another case, the Supreme Court of India observed that, "A serious relook of the entire provision is warranted by the Legislature."<sup>32</sup> The Apex Court has time and again expressed concern over the misuse of the provision of special legislations and stated that they are often mechanical implementations against the family members.<sup>33</sup> Malafide intention, false complaints and vengeance have often been seen as the motivating factors behind the proceedings in such cases.<sup>34</sup> The provisions of the special and gender sensitive legislation took the shape of a weapon rather than a shield. Thus because of the societal implications where law was formulated as a protection principle, it has now become a misuse concern, with a need for a judicial balancing mechanism.

## **6. Challenges of gender based and gender sensitive and gender inclusive legislation in India**

Social structural inequalities in India were being addressed by introduction of Gender based and gender sensitive legislations. These specific legislations have to a very large extent managed to provide remedy to the historical gender-based challenges and to promote substantive equality. One of the greatest challenges that crops up is how to bridge the gap between formal equality and substantive equality, where formal treated all alike and substantive equality needs to address structural disadvantages that still mole the Indian mindset. Breaking the stereotypes and thinking beyond the realms of set notions has been a very challenging and a difficult task. The Apex Court has also highlighted the importance of inclusive legislations no matter how difficult it is."The State action must avoid paternalism and instead promote autonomy and dignity."<sup>35</sup> Thus continues the normative struggle between assumed victims and perpetrators as compared to victims unseen and uncared for. Indian Criminal Laws are still trapped in the traditional notions of gender importance turning a convenient blind eye to the concept of inclusiveness. "The criminal statutes have not been fully harmonized with this inclusive

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<sup>29</sup> Independent thought V/S Union of India (2017) 10 SCC 800 (India)

<sup>30</sup> Vishakha &Ors. V/S State of Rajasthan, MANU/SC/0786/1997.

<sup>31</sup> Sushil Kumar Sharma V/S Union of India, (2005) 6 SCC 281, para 12.

<sup>32</sup> Preeti Gupta V/S State of Jharkhand, (2010) 7 SCC 667, Para 34.

<sup>33</sup> Social Action Forum for Manav Adhikar V/S Union of India, (2018) 10 SCC 443, Para 14-17,

Kahkashan Kausar V/S Union of India V/S State of Bihar,(2022) 6 SCC 599, Para 18.

<sup>34</sup> Vineet umar V/S State of Uttar Pradesh, (2017) 13 SCC 369, Paras 22-24.

<sup>35</sup> Anuj Garg V/S Hotel Association of India, (2008) 3 SCC 1

understanding of gender.”<sup>36</sup> Critical loopholes on male and transgender victims lacking sufficient laws to grant statutory protection still persist. BNS having removed the section of unnatural offences completely shows that legal recognition lags way behind the Constitutional Morality of Equality and Human Rights. History has been a witness that insufficient legal reforms have never transformed entrenched social attitudes. Path breaking transformation will only take place through inclusive legislations that shall outweigh social morality and establish Constitutional Morality. The judicial progressivism in India is hindered by Honor based norms which undermine reporting, victim blaming and shaming that deters prosecution and the concept of informal dispute resolution often overrides statutory safeguards. Absolute equality and absolute neutrality is difficult to achieve. The Supreme Court of India has worked upon the equality jurisprudence and interpreted laws that answer the empirical reality questions and develop them further to match the guarantees of equality, fairness and non-discrimination.

### **7.Comparitive Analysis: International Best Practices**

Gender recognition, gender inclusiveness are definitely keywords on the modern developmental structure of equality under the modern era. But a debate upon the same can be traced back to the 18<sup>th</sup> century and laws, rules can be seen to be formulated in the later half of the 19<sup>th</sup> century.<sup>37</sup> In the early years even before 1920’s the American women raised their voice demanding their right to vote, after which sex based discrimination as removed in the USA and right to vote was made binary free right. Evidences can be found that women tried to actively participate in framing of the Australian constitution trying to assert their right to vote.<sup>38</sup> The general and certain abstract notions of equality were surfacing with the passage of the 19<sup>th</sup> century.<sup>39</sup> With these historically set precedents, gender equality marched forward with newer sets of equality and rights to evolve into gender inclusiveness. The words Gender Equality in the United Nations Charter can be understood to be the first universally accepted document that affirms dignity to human persons. Several Articles of the Charter have incorporated rights as a subject matter of equality to both men and women. Article 1(3) states that no person shall be devoid of his/her rights based on their race, sex, language or religion. The inclusiveness of the Declaration can be seen in the word “Sex” which became a prohibited ground for discrimination, which definitely is a very rebellious and a revolutionary move for the era of 1945. This paved the way to many International Gender sensitive laws in the times that followed. In spite of the binary language of the Charter, it still casts life in many traditional legislations to become inclusive in their content. CEDAW can be seen to be the most comprehensive treaty that addresses issues of Gender discrimination of women having its reflection in many domestic legislations in India. ICCPR and ICESCR prohibit discrimination of the ground of sex which again can be interpreted to be inclusive in nature rather than having a binary touch in it. Still many countries hold strong laws which clearly uphold discrimination of women and other marginalized genders.<sup>40</sup> Countries like Germany and Nordic Countries came forward with anti-discriminatory laws and laws recognizing the thirds gender.<sup>41</sup> Thailand made a mark by becoming the first UN Country to pass a legislation recognizing same sex and

<sup>36</sup> National Legal Services Authority V/S Union of India, (2018) 2 SCC 189

<sup>37</sup> Helen Irving, ‘Gender and the constitution equity and agency in comparative constitutional design’ (2008), p 43

<sup>38</sup> Cot, A.L. ‘Breed out the Unfit and Breed in the Fit’. American Journal of Economics and Sociology, pp 793-826

<sup>39</sup> Helen Irving, ‘Gender and the constitution equity and agency in comparative constitutional design’ (2008), p 121

<sup>40</sup> D.Neil MacCormick and Robert S.Summers, ‘Further General Reflections and Conclusions.’ Pp.531

<sup>41</sup> Billy Perigo, <http://adfontesmedia.com/time-bias-and-reality,2017>, viewed on 12.7.2025 at 11am.

trans marriages.<sup>42</sup> Canada, UK and USA represent a more gender neutral picture about laws related to sexual offences.<sup>43</sup> Many countries are making efforts to introduce gender neutral laws, many have achieved it, yet there still is a long way to go for many countries including India to achieve the equality in a true legal sense.

### Suggestions

Criminal laws and victim and offender perceptions are linked to patriarchal civilizations. The introduction of gender-neutral laws for specific offenses is one of the many reforms of the modern era. However, the reality that is evident is an imbalance between total exclusion and excessive inclusivity because of the structural standards of an antiquated way of thinking. The approach that is currently required does not entail eliminating any gender realities or laws; rather, it entails a process of developing, framing, designing, or redesigning legal protection so that all victims can be protected regardless of binary divisions and certain special protection for historically marginalized communities. The researchers here would like to suggest certain changes that need to be introduced to make laws more effective to suite the justice delivery system.

1. To amend certain laws that hold stereotype notions about gender-based victims. This leads to exclusion of male, transgender and other non-binary fractions from seeking protection as equally as a female victim.
2. To amend certain offences which consider a gender biased view on males being the only perpetrator. This prevents prosecution of people from other genders.
3. To change the constant use of the gender-based words like, women, wife of husband and to let the provision gain life through broad interpretation in the interest of justice.
4. To strictly consider that certain gender-based laws can be misused by women and girls. This defeats the purpose of the legislation as presumption plays a very important role for these legislations.
5. To change the thought of marriage being a passive consent to sexual intercourse. This has led to great divide in the understanding of the word autonomy and consent of an individual.
6. Amend rape laws in BNS to include “a person commits sexual offence against another if they engage in non-consensual sexual activity against another”, rather than confining the offence to gender notions of victims and offender.
7. To include any person in the laws relating to sexual harassment at workplace so as to address the offences being committed against the male victims as well, specifically at the time when BNS is silent about unnatural offences altogether.
8. The term Consent that plays a very critical role in determination of culpability of an individual should be defined universally to have same meaning for all laws so as to rule out the difference in use of the word in different legislations.
9. Domestic Violence laws should be made broad enough to cover same sex offences in live in relations and live in relations generally.
10. Awareness should be created about gender sensitive legislations so that it increases the case reportability with faith in the justice delivery system.
11. Laws should adopt a victim centric approach which is gender neutral.

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<sup>42</sup> “Proposed Law would allow transgenders to legally change gender and marry” Coconuts Bangkok.26<sup>th</sup> July 2017

<sup>43</sup> Gender Neutrality in Sexual Offences Law In India: A Critical Analysis by Damini and Prof. S.K. Gill Indian Journal of Legal Review, ISSN 2583 2344.

## CONCLUSION

The tussle between gender sensitive and gender-neutral laws in India is basically the long pending debate between Formal Equality and Substantive equality. Gender sensitive laws have definitely played a great role in eliminating the historical inequalities that were deep rooted in the Indian mindset, but the gender-neutral laws promote the concept of inclusivity which is an example of progressive equality and fair justice. Justice does not always mean reading between the black and white line, it involves reading beyond the lines. There has been for decades a long ongoing debate evaluating a balanced approach between criminal laws and Article 14, 15, 19 and 21 of the Indian Constitution. The words used in article 14 are, "any person", which basically means it is a law applicable and available to all human beings, not restricting its scope to any particular gender. Gender neutral laws ensure that males and transgender all can be considered as victims. But till date men and transgender persons have no adequate criminal laws for their protection.<sup>44</sup>India definitely continues to witness offences against women, but one cannot turn a blind eye on the offences committed against men and transgender persons in this very society. We have to reconcile neutrality and sensitivity to address the much-ignored realities of the present day society. We have to go beyond the traditional category of victims to see male victims and victims from other sexual minority groups and other binary fractions. India right now needs laws to address such inequality, where Indian's Constitutional framework supports both gender sensitive as well as gender neutral laws.

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<sup>44</sup> Former Chief Justice of India DY Chandrachud -"75 years later, marital rape still not a crime", <http://www.indiatoday.in/india/story/dychandrachud-on-marital-rape-law-regret>, viewed on 30.8.25 at 11am.