

# Constitutional Provisions In India And The Need For Gender Neutral Laws

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## ABSTRACT

Gender neutrality within legal frameworks is a cornerstone of promoting fairness, equity, and justice for individuals of all genders. This paper critically examines the challenges, opportunities, and policy recommendations surrounding the implementation of gender-neutral laws in India, with a focus on addressing the misuse of laws by both men and women. Key areas of analysis include existing laws favoring women, such as those pertaining to domestic violence and sexual offenses, which often neglect the rights and protections of men. Conversely, laws neglecting men, such as those governing parental rights and child custody, perpetuate stereotypes and inequalities within society. Instances of law misuse further underscore the need for more balanced and equitable legal provisions, with recommendations including legislative reforms, institutional initiatives, and public awareness campaigns. Suggested policy recommendations emphasize the importance of enacting gender-neutral legislation, strengthening safeguards against law misuse, providing institutional training programs, launching public awareness campaigns, and investing in research and data collection efforts. By implementing these recommendations, policymakers can work towards creating a more just, equitable, and inclusive legal system that upholds the rights and dignity of all individuals, irrespective of their gender identity or expression.

**Keywords:** gender neutrality, legal framework, gender equality, law misuse, legislative reforms, institutional initiatives, public awareness, India.

## 1. INTRODUCTION

Gender equality and justice have long been central tenets of modern democracies, including India, where constitutional provisions strive to ensure fairness and equity for all citizens. The Indian Constitution, a beacon of democracy and social justice, enshrines fundamental rights and directive principles aimed at fostering an egalitarian society. However, despite the progressive legal framework, the issue of gender neutrality in laws remains a subject of contention and debate.<sup>1</sup>

In recent years, there has been a growing discourse surrounding the need for gender-neutral laws, particularly concerning the perception that existing legislation disproportionately favors women while neglecting the rights and protections of men. This asymmetry in legal provisions has led to concerns over fairness and justice, prompting calls for a reevaluation of India's legal landscape.<sup>2</sup>

One of the primary concerns driving the demand for gender-neutral laws is the perceived misuse of existing legal provisions by individuals, particularly women. While legislative measures intended to safeguard women's rights and address historical gender disparities are crucial, instances of misuse or exploitation of these laws have raised serious questions about their efficacy and fairness.<sup>3</sup>

The phenomenon of law misuse encompasses various scenarios, including false accusations, extortion, and manipulation of legal mechanisms for personal gain or vendetta. Such misuse not only undermines the credibility of the legal system but also perpetuates injustice by subjecting innocent individuals, often men, to unwarranted legal scrutiny and hardship.<sup>4</sup>

One prominent example is the misuse of laws pertaining to dowry harassment (Section 498A of the Indian Penal Code) and domestic violence (Protection of Women from Domestic Violence Act, 2005). While these laws were enacted with the

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<sup>1</sup> Manupatra, "Articles – Manupatra" available at: <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India>.

<sup>2</sup> Sandra Fredman FBA Kc, "Equality: Concepts and Controversies" *OUP Academic*, 2022 available at: <https://academic.oup.com/book/45338/chapter/389236591>.

<sup>3</sup> Ibid.

<sup>4</sup> Arti Aasha, "Social Transformation Law Current Issues & Challenges" *ABS Books India New Delhi*, 2022 available at: [https://www.researchgate.net/publication/362156459\\_Social\\_Transformation\\_Law\\_Current\\_Issues\\_Challenges](https://www.researchgate.net/publication/362156459_Social_Transformation_Law_Current_Issues_Challenges).

noble intention of protecting women from abuse and exploitation within the household, they have been reported to be misused by some individuals to settle personal scores or gain leverage in marital disputes. The indiscriminate arrest of husbands and their family members based on false allegations has drawn criticism from various quarters, highlighting the need for greater safeguards against legal abuse.

Similarly, laws addressing sexual offenses, such as rape and sexual harassment, have been subject to misuse, with instances of false accusations and extortion tarnishing the credibility of genuine cases and compromising the principles of justice. The absence of stringent penalties for filing false complaints or providing misleading evidence further exacerbates the problem, creating a climate where the presumption of innocence is often overshadowed by the fear of false accusations.

Moreover, the societal stigma attached to reporting incidents of male victimization further compounds the issue, discouraging men from seeking legal recourse and perpetuating a culture of silence and impunity. Cases of male victims being overlooked or dismissed by law enforcement agencies and support services underscore the systemic biases that undermine gender equality and justice.<sup>5</sup>

In light of these challenges, there is a pressing need to reevaluate existing legal frameworks and enact gender-neutral laws that uphold the principles of equality, fairness, and due process for all individuals, irrespective of gender. By addressing the shortcomings of current legislation and incorporating safeguards against misuse and exploitation, policymakers can ensure that the legal system remains a bulwark of justice and integrity.<sup>6</sup>

This paper seeks to explore the nuances of gender neutrality in Indian laws, with a focus on the imperative for legislative reforms to address the issue of law misuse and promote gender equality. Through an analysis of relevant case studies, legislative provisions, and scholarly literature, it aims to elucidate the complexities of the legal landscape and propose

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<sup>5</sup> Eugene Emeka Dim and Alexandra Lysova, "Male Victims' Experiences With and Perceptions of the Criminal Justice Response to Intimate Partner Abuse," 37 *Journal of interpersonal violence* NP13067-91 (2022).

<sup>6</sup> Ibid.

actionable recommendations for fostering a more equitable and inclusive society.

### 1.1. OBJECTIVES OF THE STUDY

The study aims to achieve the following objectives:

1. To critically examine the existing legal provisions in India related to gender-specific laws and assess their impact on gender equality and justice.
2. To analyze the prevalence and implications of law misuse, particularly in cases where individuals exploit gender-specific legislation for personal gain or vendetta.
3. To identify the socio-cultural, legal, and institutional factors contributing to the misuse of gender-specific laws and assess the challenges in addressing this phenomenon.
4. To propose policy recommendations and legislative reforms aimed at promoting gender neutrality in Indian laws, with a focus on ensuring fairness, equity, and due process for all individuals, regardless of gender.

## 2. CONSTITUTIONAL PROVISIONS IN INDIA

The Indian Constitution, adopted on January 26, 1950, is the supreme law of the land, providing the framework for governance and ensuring fundamental rights and freedoms for all citizens. Its preamble declares India to be a sovereign, socialist, secular, and democratic republic, committed to securing justice, liberty, equality, and fraternity for its people. Embedded within its provisions are safeguards and directives aimed at fostering gender equality and social justice.<sup>7</sup>

Fundamental Rights, enshrined in Part III of the Constitution, form the cornerstone of individual liberties and protections against state encroachment. Article 14<sup>8</sup> guarantees the right to equality before the law and equal protection of laws, prohibiting discrimination on grounds of sex, among others. However, while this provision theoretically applies to both men

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<sup>7</sup> “Constitution of India,” *available at*: <https://indiankanoon.org/doc/237570/> (last visited March 25, 2024).

<sup>8</sup> “Article 14 in Constitution of India,” *available at*: <https://indiankanoon.org/doc/367586/> (last visited March 25, 2024).

and women, the practical application has often been criticized for its failure to address gender-specific injustices adequately.

Article 15<sup>9</sup> prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, reinforcing the principle of equality before the law. Yet, the persistence of gender-based discrimination and disparities in various spheres of life highlights the need for more robust legal mechanisms to address systemic inequalities.

Directive Principles of State Policy, outlined in Part IV<sup>10</sup> of the Constitution, provide guidelines for state policy-making, emphasizing social and economic justice. Article 39(a) directs the state to ensure that men and women have the right to an adequate means of livelihood and equal pay for equal work. However, despite such directives, disparities in wages and employment opportunities persist, necessitating comprehensive legislative measures to ensure gender parity in the workforce.

Gender-specific provisions within the Constitution aim to address historical injustices and disparities faced by women. Article 15(3) allows the state to make special provisions for women and children, acknowledging the need for affirmative action to uplift marginalized groups. While such provisions are crucial for promoting gender equality, there is a growing recognition of the need for a balanced approach that considers the rights and vulnerabilities of all genders.

The legal framework for gender justice in India comprises various statutes and judicial interpretations aimed at safeguarding the rights and dignity of individuals, irrespective of gender. The Protection of Women from Domestic Violence Act, 2005, for instance, provides legal recourse to women facing domestic abuse, acknowledging the disproportionate impact of such violence on women. However, the absence of similar legal protections for men facing domestic violence underscores the need for gender-neutral legislation to address the needs of all victims.

Similarly, laws addressing sexual offenses, such as rape and sexual harassment, primarily focus on protecting women from violence and exploitation. While these laws play a crucial role

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<sup>9</sup> “Article 15 in Constitution of India,” *available at*: <https://indiankanoon.org/doc/609295/> (last visited March 25, 2024).

<sup>10</sup> Part IV of the Constitution

in ensuring women's safety and security, the lack of adequate provisions for male victims reflects a systemic bias that undermines the principles of equality and justice. Instances of false accusations and misuse of these laws further highlight the need for stringent safeguards against legal abuse.<sup>11</sup>

### 3. GENDER NEUTRAL LAWS: CONCEPT AND NEED

Gender neutrality in law refers to the principle of ensuring that legal provisions are applied without discrimination based on gender, thereby treating individuals of all genders equally under the law. It aims to dismantle traditional gender roles and stereotypes embedded within legal frameworks, promoting fairness, equity, and inclusivity. While the concept of gender neutrality is integral to achieving true gender equality, its implementation in legislative practice remains a complex and evolving process.<sup>12</sup>

#### Significance of Gender Neutral Laws:

Gender-neutral laws play a crucial role in addressing the systemic biases and inequalities that disproportionately affect individuals based on their gender. By eliminating discriminatory practices and ensuring equal rights and protections for all genders, these laws contribute to fostering a more just and inclusive society. Moreover, gender-neutral legislation helps challenge traditional stereotypes and norms that perpetuate gender-based discrimination and reinforce power imbalances.

In the context of addressing the misuse of laws by both men and women, gender-neutral legislation serves as a vital tool for promoting accountability and fairness. By establishing clear guidelines and safeguards against legal abuse, such laws mitigate the risk of false accusations and wrongful convictions, thereby upholding the principles of justice and due process. Additionally, gender-neutral laws empower individuals of all

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<sup>11</sup> katharina.kiener-manu, "Crime Prevention & Criminal Justice Module 9 Key Issues: Topic 1 - *Gender-based discrimination and women in conflict with the law*" available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

<sup>12</sup> Rigmor Argren et al., "The Evolving Recognition of Gender in International and European Law" *Springer International Publishing*, 2023 available at: [https://link.springer.com/chapter/10.1007/978-3-031-14360-1\\_8](https://link.springer.com/chapter/10.1007/978-3-031-14360-1_8).

genders to seek legal recourse and protection against injustice, regardless of societal expectations or stereotypes.

### **Current Status of Gender Neutral Laws in India:**

Despite significant progress in advancing gender equality and justice, the legal landscape in India continues to grapple with challenges related to gender neutrality. While certain laws, such as those pertaining to property rights and inheritance, are inherently gender-neutral, many statutes still exhibit gender biases or fail to adequately address the needs and vulnerabilities of all genders.<sup>13</sup>

One area where gender-neutral laws are particularly lacking is in addressing domestic violence. While legislation such as the Protection of Women from Domestic Violence Act, 2005<sup>14</sup>, provides crucial protections for women facing abuse, there is a noticeable absence of similar provisions for male victims. This asymmetry not only undermines the rights of male victims but also perpetuates the misconception that domestic violence is exclusively a women's issue, thereby hindering efforts to address the problem comprehensively.

Similarly, laws governing sexual offenses often focus primarily on protecting women from violence and exploitation, overlooking the experiences of male victims. The Criminal Law (Amendment) Act, 2013, introduced significant reforms to address sexual violence against women, including the recognition of new offenses such as acid attacks and stalking. However, the absence of adequate legal provisions for male victims of sexual violence reflects a systemic bias that undermines the principles of gender equality and justice.

In addition to the lack of gender-neutral legislation, the misuse of existing laws by both men and women further underscores the need for comprehensive legal reforms. Instances of false accusations and manipulation of legal mechanisms for personal gain highlight the shortcomings of gender-specific laws in safeguarding against abuse and exploitation. Without adequate safeguards and penalties for misuse, the credibility

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<sup>13</sup> Ojaswini Singh & Atulit Raj, "Live Law" *Live Law*, 15 April 2023.

<sup>14</sup> "Protection of Women from Domestic Violence Act, 2005," 2005 *available at*: <https://www.indiacode.nic.in/handle/123456789/2021> (last visited March 25, 2024).

of the legal system is compromised, leading to injustice and erosion of trust.

In response to these challenges, there have been calls for reforms aimed at promoting gender neutrality in Indian laws. Initiatives such as the drafting of the Gender Equality Bill seek to address gaps in existing legislation and ensure equal rights and protections for individuals of all genders. By adopting a holistic approach to legal reform and incorporating principles of gender neutrality, policymakers can work towards creating a more inclusive and equitable legal framework that upholds the rights and dignity of all individuals, irrespective of gender.

#### **4. CRITIQUE OF EXISTING LAWS AND THEIR IMPACT ON GENDER JUSTICE**

Laws favoring women have been a subject of both praise and critique in India's legal landscape. While these laws were introduced with the intention of addressing historical injustices and disparities faced by women, their implementation and impact have been met with mixed reactions.

One of the most notable laws favoring women is the Protection of Women from Domestic Violence Act, 2005. This legislation provides comprehensive protection to women against various forms of domestic abuse, including physical, emotional, verbal, economic, and sexual abuse. While the enactment of this law was a significant step towards addressing the pervasive issue of domestic violence against women, critics argue that its gender-specific focus overlooks the experiences of male victims of domestic abuse. As a result, male victims often find themselves marginalized and without adequate legal recourse, highlighting the need for more inclusive and gender-neutral legislation in this regard.<sup>15</sup>

Similarly, laws governing matrimonial disputes, such as Section 498A of the Indian Penal Code, have faced criticism for their biased application and potential for misuse. This provision, which deals with dowry harassment, has been accused of being weaponized by some women to falsely implicate their husbands and in-laws in cases of marital discord. The widespread misuse of this law has led to numerous instances of innocent individuals being subjected to harassment, arrest,

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<sup>15</sup> Ravneet Kaur and Suneela Garg, "Addressing domestic violence against women: an unfinished agenda," 33 *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine* 73–6 (2008).

and legal proceedings, casting doubts on its effectiveness as a tool for addressing genuine cases of dowry-related abuse. Critics argue that the lack of stringent safeguards against false accusations and the presumption of guilt tilts the scales of justice in favor of women, undermining the principles of fairness and due process.<sup>16</sup>

Furthermore, laws governing alimony and maintenance in divorce cases have been criticized for perpetuating gender stereotypes and inequalities. While these laws are intended to ensure financial support for spouses, irrespective of gender, their implementation often results in disproportionately high awards in favor of women. The presumption that women are inherently more vulnerable and in need of financial assistance reinforces traditional gender roles and fails to account for changing social dynamics. As a result, men may find themselves burdened with exorbitant financial obligations, regardless of their actual financial capacity or circumstances, leading to feelings of injustice and resentment.

On the other hand, laws neglecting men have also been a cause for concern in India's legal system. Despite significant strides in advancing women's rights and protections, men continue to face challenges and injustices in various spheres of life, often due to the absence of gender-neutral laws. For example, while the definition of rape under Section 375 of the Indian Penal Code is gender-neutral, the legal framework surrounding sexual offenses predominantly focuses on protecting women from sexual violence. Male victims of rape or sexual assault may find it difficult to access support services or seek justice due to societal stigmas and the lack of adequate legal provisions tailored to their needs.<sup>17</sup>

Additionally, laws governing parental rights and child custody often favor mothers over fathers, perpetuating the stereotype that women are inherently better caregivers. Despite changing social norms and evolving family structures, courts may still exhibit bias towards awarding custody to mothers, even in cases where fathers are equally capable and willing to provide

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<sup>16</sup> Shalu Nigam, "Is Domestic Violence a Lesser Crime? Countering the Backlash against Section 498A, IPC" *Elsevier BV*, 2016  
available at:

[https://www.researchgate.net/publication/314461180\\_Is\\_Domestic\\_Violence\\_a\\_Lesser\\_Crime\\_Countering\\_the\\_Backlash\\_against\\_Secti\\_on\\_498A\\_IPC](https://www.researchgate.net/publication/314461180_Is_Domestic_Violence_a_Lesser_Crime_Countering_the_Backlash_against_Secti_on_498A_IPC).

<sup>17</sup> Tannvi Tannvi and Sharmila Narayana, "The challenge of gender stereotyping in Indian courts," 8 *Cogent Social Sciences* (2022).

care. This gender-based presumption not only undermines fathers' rights but also deprives children of meaningful relationships with their fathers, reinforcing harmful stereotypes and perpetuating inequalities within families.

Instances of laws misused by women further underscore the need for more balanced and equitable legal provisions. False accusations of dowry harassment, domestic violence, and sexual offenses not only harm innocent individuals but also erode trust in the legal system and perpetuate a culture of suspicion and hostility. By addressing the root causes of law misuse and strengthening safeguards against abuse, policymakers can uphold the principles of justice, fairness, and gender equality, ensuring that the legal system serves the interests of all individuals, regardless of gender.

## **5. ARGUMENTS FOR GENDER NEUTRAL LAWS**

Arguments in favor of gender-neutral laws emphasize the importance of ensuring fairness, equity, and inclusivity within the legal system. Advocates contend that gender-neutral legislation is essential for addressing systemic biases, promoting gender equality, and safeguarding the rights and dignity of all individuals, irrespective of gender.

One compelling argument for gender-neutral laws is rooted in the principle of equality before the law, enshrined in Article 14<sup>18</sup> of the Indian Constitution. This fundamental right guarantees equal protection of laws to all citizens, regardless of their gender. However, the existence of gender-specific laws, which predominantly favor women and neglect the rights of men, undermines the principle of equality and perpetuates gender-based discrimination. By adopting a gender-neutral approach to legislation, policymakers can ensure that legal provisions are applied without bias or favoritism, thereby upholding the principles of justice and fairness.

Moreover, gender-neutral laws play a crucial role in challenging traditional gender roles and stereotypes that perpetuate inequality and restrict individual freedoms. By dismantling outdated notions of masculinity and femininity, gender-neutral legislation empowers individuals to defy societal expectations and pursue their aspirations without fear of judgment or discrimination. For example, laws governing

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<sup>18</sup> Article 14 in Constitution of India,” available at: <https://indiankanoon.org/doc/367586/> (last visited March 25, 2024).

parental leave and childcare should be gender-neutral to encourage shared parenting responsibilities and combat the stereotype that caregiving is solely a woman's responsibility.

Furthermore, gender-neutral laws are essential for addressing the diverse needs and vulnerabilities of individuals across the gender spectrum. While traditional legal frameworks may fail to recognize the experiences of transgender and non-binary individuals, gender-neutral legislation acknowledges and affirms their identities, ensuring equal rights and protections under the law. For instance, laws governing access to public facilities, healthcare services, and employment opportunities should be inclusive and accommodating of diverse gender identities to prevent discrimination and exclusion.<sup>19</sup>

Another argument in favor of gender-neutral laws is their potential to mitigate the misuse and abuse of legal provisions by both men and women. By eliminating gender-specific biases and loopholes within the legal system, gender-neutral legislation reduces the likelihood of false accusations, wrongful convictions, and legal harassment. For example, laws governing domestic violence and sexual offenses should be crafted in a manner that protects all victims, regardless of their gender, while also ensuring due process and accountability for perpetrators. Strengthening safeguards against law misuse not only enhances the credibility of the legal system but also fosters a climate of trust and transparency.<sup>20</sup>

Furthermore, gender-neutral laws contribute to fostering healthier and more equitable relationships between individuals, families, and communities. By promoting mutual respect, cooperation, and shared responsibilities, gender-neutral legislation cultivates a culture of equality and mutual support, thereby reducing conflict and violence within households and society at large. For example, laws governing marriage and divorce should prioritize the equitable distribution of assets and liabilities, regardless of the genders

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<sup>19</sup> Aoife M O'Connor et al., "Transcending the Gender Binary under International Law: Advancing Health-Related Human Rights for Trans\* Populations," 50 *The Journal of law, medicine & ethics : a journal of the American Society of Law, Medicine & Ethics* 409–24 (2022).

<sup>20</sup> "Part 2: The Argument for a Gender-Neutral PoSH Legislation," *Rainmaker Blog* available at: <https://rainmaker.co.in/blog/view/part-2-the-argument-for-a-gender-neutral-posh-legislation>.

of the spouses, to prevent financial exploitation and ensure a dignified transition out of marriage.

## **6. CHALLENGES AND ROADBLOCKS IN IMPLEMENTING GENDER NEUTRAL LAWS**

Implementing gender-neutral laws poses several challenges and roadblocks, ranging from societal attitudes and cultural norms to legal complexities and institutional barriers. These obstacles hinder efforts to promote gender equality and justice within the legal system, requiring comprehensive strategies to address systemic biases and ensure the effective implementation of gender-neutral legislation.<sup>21</sup>

One significant challenge in implementing gender-neutral laws is the resistance from entrenched patriarchal attitudes and societal norms that perpetuate gender-based discrimination and inequality. Deep-rooted beliefs regarding gender roles and responsibilities often hinder progress towards gender equality, leading to resistance and backlash against efforts to reform existing legal frameworks. For example, laws governing property rights and inheritance may be influenced by cultural traditions and customs that prioritize male heirs over female heirs, perpetuating economic disparities and limiting women's access to resources and opportunities.<sup>22</sup>

Moreover, legal complexities and ambiguities surrounding gender identity and expression pose challenges in crafting and enforcing gender-neutral laws. While efforts have been made to recognize and accommodate diverse gender identities within legislative frameworks, the lack of standardized definitions and terminology complicates implementation and enforcement. For instance, laws governing access to public facilities, healthcare services, and employment opportunities may inadvertently exclude or marginalize transgender and non-binary individuals due to inadequate legal recognition and protection.

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<sup>21</sup> katharina.kiener-manu, "Crime Prevention & Criminal Justice Module 9 Key Issues: Topic 1 - *Gender-based discrimination and women in conflict with the law*" available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

<sup>22</sup> Mayank Gupta, Jayakrishna S Madabushi and Nihit Gupta, "Critical Overview of Patriarchy, Its Interferences With Psychological Development, and Risks for Mental Health," 15 *Cureus e40216* (2023).

Additionally, institutional barriers within the legal system, including bias and discrimination among law enforcement officials, judiciary, and legal practitioners, impede the effective implementation of gender-neutral laws. Prejudices based on gender stereotypes and biases may influence decision-making processes, leading to unequal treatment and outcomes for individuals of different genders. For example, male victims of domestic violence or sexual assault may encounter skepticism and disbelief from law enforcement agencies and courts, perpetuating the misconception that such crimes primarily affect women.

Furthermore, the lack of awareness and understanding among policymakers, lawmakers, and the general public about the importance and implications of gender-neutral laws poses a significant obstacle to their implementation. Misconceptions and myths about gender equality and justice may lead to resistance or apathy towards legislative reforms aimed at promoting gender neutrality. Education and awareness-raising initiatives are essential to foster a more inclusive and supportive environment for gender-neutral legislation, ensuring broad-based support and engagement from stakeholders.

Another challenge in implementing gender-neutral laws is the absence of comprehensive data and research on gender-based disparities and inequalities within the legal system. Limited availability of disaggregated data based on gender identity and expression hinders efforts to identify and address systemic biases and gaps in legal protections. Without robust evidence and analysis, policymakers may struggle to formulate effective strategies and interventions to promote gender equality and justice.<sup>23</sup>

Moreover, the politicization of gender issues and legislative reforms can impede progress towards gender-neutral laws, as competing interests and ideological differences may hinder consensus-building and compromise. Political opposition to gender-neutral legislation may stem from concerns about perceived threats to traditional gender roles and power structures, leading to legislative gridlock and stagnation. Overcoming political resistance requires sustained advocacy

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<sup>23</sup> Eva Bermúdez Figueroa et al., “Gender and Structural Inequalities from a Socio-Legal Perspective” *Springer International Publishing*, 2023 available at: [https://link.springer.com/chapter/10.1007/978-3-031-14360-1\\_4](https://link.springer.com/chapter/10.1007/978-3-031-14360-1_4).

and coalition-building efforts to mobilize support for gender equality and justice initiatives.

### **CASE LAWS**

As held by the Delhi High Court in the case of Rakesh v. State of NCT of Delhi<sup>24</sup> (2023), the POCSO Act is applicable to children of all genders, and claiming that it is being misused due to its gender-inclusive terminology is misleading.

the Supreme Court of India in the case of “Binu Tamta & Anr. Versus High Court Of Delhi & Ors.”<sup>25</sup> on November 07,2023 refused the request made to direct that “sexual harassment” be defined in gender-neutral terms to bring within its purview acts of sexual harassment committed by respondents of the same sex as the “aggrieved person”. The Court also refused to direct that references to “aggrieved woman” be supplanted with “aggrieved persons” to reflect the gender-neutral protection of the (Prevention, Prohibition and Redressal) Regulations, 2013.

### **7. POLICY RECOMMENDATIONS**

Policy recommendations aimed at addressing the challenges surrounding gender-neutral laws and mitigating the misuse of laws by both men and women are essential to promoting fairness, equity, and justice within the legal system. These recommendations encompass legislative reforms, institutional initiatives, and awareness-raising efforts to foster a more inclusive and supportive environment for gender equality and justice.<sup>26</sup>

One key policy recommendation is the enactment of gender-neutral legislation that ensures equal rights, protections, and opportunities for individuals of all genders. Legislative reforms should prioritize the elimination of gender-based biases and stereotypes within existing laws, particularly those governing family law, domestic violence, sexual offenses, and employment rights. For example, laws governing parental rights and child custody should be revised to promote shared

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<sup>24</sup> Rakesh v. State of NCT of Delhi CA No.75/2022

<sup>25</sup> Binu Tamta & Anr. Versus High Court Of Delhi & Ors. (2014) 13 SCC 257

<sup>26</sup> “National Policy for Women Empowerment Ministry of Women & Child Development,” *hudqm available at:* <https://wcd.nic.in/womendevelopment/national-policy-women-empowerment>.

parenting responsibilities and ensure the best interests of the child, regardless of the genders of the parents.<sup>27</sup>

Moreover, legislative reforms should incorporate stringent safeguards against the misuse of laws by both men and women, including penalties for false accusations, perjury, and abuse of legal processes. For instance, provisions within the Indian Penal Code and other relevant statutes should be amended to deter individuals from making false complaints or providing misleading evidence for personal gain or vendetta. By strengthening accountability and transparency within the legal system, policymakers can restore public trust and confidence in the administration of justice.

In addition to legislative reforms, institutional initiatives are essential to promote gender neutrality and prevent law misuse within law enforcement agencies, judiciary, and legal institutions. Training programs and capacity-building initiatives should be implemented to raise awareness among law enforcement officials, judges, and legal practitioners about gender-based biases and stereotypes and their impact on decision-making processes. Sensitization workshops and educational modules on gender equality, diversity, and human rights should be integrated into the curriculum of law schools and professional training programs to instill a culture of gender sensitivity and inclusivity within the legal profession.

Furthermore, institutional mechanisms for monitoring and evaluating the implementation of gender-neutral laws and addressing instances of law misuse should be strengthened. Dedicated oversight bodies, such as gender equality commissions or ombudsman offices, should be established to investigate complaints of discrimination, bias, and misconduct within the legal system and recommend corrective actions. Transparent and accountable grievance redressal mechanisms should be accessible to individuals who have experienced injustice or discrimination based on their gender identity or expression.

Public awareness and advocacy campaigns are crucial for generating support and mobilizing action towards gender equality and justice. Civil society organizations, grassroots movements, and advocacy groups should collaborate with

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<sup>27</sup> Rebecca Stewart et al., “Gendered stereotypes and norms: A systematic review of interventions designed to shift attitudes and behaviour,” 7 *Heliyon* e06660 (2021).

government agencies, media outlets, and community leaders to raise awareness about the importance of gender-neutral laws and the consequences of law misuse. Public education initiatives should focus on dispelling myths and misconceptions about gender roles, stereotypes, and biases and promoting values of equality, respect, and dignity for all individuals, irrespective of their gender identity or expression.<sup>28</sup>

Moreover, collaborative efforts between government agencies, civil society organizations, and academic institutions are essential for conducting research and collecting data on gender-based disparities and inequalities within the legal system. Evidence-based policy-making requires reliable and comprehensive data to identify gaps in legal protections, assess the impact of legislative reforms, and inform targeted interventions to promote gender equality and justice. By investing in research and data collection efforts, policymakers can develop evidence-based strategies to address systemic biases and barriers to gender-neutral laws effectively.<sup>29</sup>

## 8. CONCLUSION

In conclusion, the quest for gender equality and justice within India's legal system necessitates a nuanced understanding of the challenges, opportunities, and complexities surrounding the implementation of gender-neutral laws. While significant strides have been made in advancing women's rights and protections, persistent biases, societal norms, and institutional barriers continue to hinder progress towards gender equality for individuals of all genders.

The critique of existing laws reveals a dichotomy wherein certain laws favor women, while others neglect the rights and protections of men. Laws addressing issues such as domestic violence and sexual offenses predominantly focus on protecting women, often at the expense of male victims who may encounter skepticism and disbelief within the legal system. Conversely, laws governing areas such as parental rights and child custody may exhibit biases that favor women

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<sup>28</sup> Ada Hasanagic, "25 Organizations Fighting for Gender Equality" *Human Rights Careers*, 2019 available at: <https://www.humanrightscareers.com/magazine/organizations-gender-equality/>.

<sup>29</sup> "Gender-Based Data Crucial for Developing Intersectional Digital Spheres Reflecting Women's, Girls' Identities, Lives, Speakers Tell Commission," *Meetings Coverage and Press Releases* available at: <https://press.un.org/en/2023/wom2227.doc.htm>.

over men, perpetuating stereotypes and inequalities within families and society.

Moreover, instances of law misuse by both men and women underscore the need for more balanced and equitable legal provisions. False accusations, manipulation of legal processes, and exploitation of gender-specific laws for personal gain or vendetta erode trust in the legal system and perpetuate injustice. Strengthening safeguards against law misuse and enhancing accountability within the legal system are essential to upholding the principles of fairness, equity, and due process for all individuals.

Policy recommendations aimed at promoting gender-neutral laws and preventing law misuse emphasize the importance of legislative reforms, institutional initiatives, and public awareness campaigns. Enacting gender-neutral legislation that ensures equal rights and protections for individuals of all genders is crucial for addressing systemic biases and stereotypes within the legal system. Strengthening accountability mechanisms and implementing penalties for law misuse are essential to restoring public trust and confidence in the administration of justice.

Institutional initiatives, including training programs and capacity-building efforts, are necessary to raise awareness among law enforcement officials, judges, and legal practitioners about gender-based biases and stereotypes. Public awareness and advocacy campaigns play a vital role in mobilizing support for gender equality and justice initiatives and dispelling myths and misconceptions about gender roles and biases within society.

Collaborative efforts between government agencies, civil society organizations, and academic institutions are essential for conducting research and collecting data on gender-based disparities and inequalities within the legal system. Evidence-based policy-making requires reliable and comprehensive data to inform targeted interventions and strategies to promote gender equality and justice effectively.

Ultimately, achieving gender equality and justice within India's legal system requires a collective commitment to challenging entrenched biases, dismantling discriminatory practices, and fostering a culture of inclusivity, respect, and dignity for all individuals, irrespective of their gender identity or expression. By adopting a holistic and multi-faceted approach that

addresses the root causes of gender-based discrimination and inequality, policymakers can lay the groundwork for a more just, equitable, and inclusive society.

## 9. SUGGESTIONS

Certainly, here are some suggestions to further the cause of gender equality and justice within India's legal system:

1. **Legislative Reforms:** Advocate for the enactment of gender-neutral laws across various domains, including family law, domestic violence, sexual offenses, and employment rights, to ensure equal rights and protections for individuals of all genders.
2. **Safeguards Against Law Misuse:** Strengthen accountability mechanisms and implement penalties for law misuse, including false accusations and manipulation of legal processes, to uphold the principles of fairness, equity, and due process for all individuals.
3. **Institutional Training Programs:** Provide training programs and capacity-building initiatives for law enforcement officials, judges, and legal practitioners to raise awareness about gender-based biases and stereotypes and promote gender sensitivity within the legal system.
4. **Public Awareness Campaigns:** Launch public awareness and advocacy campaigns to mobilize support for gender equality and justice initiatives and dispel myths and misconceptions about gender roles and biases within society.
5. **Research and Data Collection:** Invest in research and data collection efforts to gather comprehensive data on gender-based disparities and inequalities within the legal system, enabling evidence-based policy-making and targeted interventions to promote gender equality and justice effectively.
6. **Collaborative Efforts:** Foster collaboration between government agencies, civil society organizations, and academic institutions to develop holistic strategies and interventions for advancing gender equality and justice within the legal system.

By implementing these suggestions, policymakers can work towards creating a more just, equitable, and inclusive legal system that upholds the rights and dignity of all individuals, irrespective of their gender identity or expression.

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