



Gender Neutrality In Law, State & Society

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Abstract

An interdisciplinary approach is attempted in this paper to analyse the interplay between gender neutrality and access to justice. While gender neutrality is often said to be a very progressive idea in law, a host of new problems are generated when it is applied in a postcolonial society like India. The paper draws from the disciplines such as law, political science, international relations, history, and statistics to criticize the assumption that neutrality would bring forth justice all by itself.

Legal analyses show that gender-neutral laws may in fact sometimes uphold patriarchal structures when no steps are taken to address the underlying inequalities. The political approach ponders over the questions of how governance, policy language, and representation impact the availability of justice for gender-diverse individuals. From a data standpoint, it illustrates how binary data catapult non-binary identities into the margins. From a historical and international perspective, the modern laws are seated within colonial legacies and critique the global human rights discourse for its limited inclusiveness.

We argue that gender neutrality, though important, remains alone insufficient. A meaningful framework of access to justice must be context-sensitive, historically aware, and structurally inclusive of all gender identities.

Keywords: Gender Neutrality, Access to Justice, Constitutional Law, Gender-Based Violence, Public Policy, Legal Reform, Colonial Legacy, International Norms, Gender Data, Inclusive Governance

Introduction

Gender neutrality in India is to be comprehended in the multi folded legacy of colonial inheritances, constitutional conventions, universal norms, and current governance problems. Indian society, prior to the coming of the British, was less rigid in genders- cultures of matrilineal customs or institutionally practiced hijras existed (Tyagi & Vats, 2025). However, colonial laws shrank identities into Victorian boxes and penalized entities which could not be accommodated in any, imprinting patriarchal principles, where India's legal and social structures continue to perpetuate that exclusion (Tyagi & Vats, 2025).

Even purportedly neutral reforms end up redrawing historic exclusions. As it is always argued, the Transgender Person. (Protection of Rights) Act, 2019, remains legally progressive yet flawed in implementation as there are provisions for limited penalties and substantive access to rights are presented inadequately (Kumar & Singh, 2025; Kritika Agrawal, 2023). Even though international efforts like CEDAW and the Yogyakarta Principles attempt inclusiveness, their effectiveness is weakened in India since such instruments are non-binding and shaped in the Global North, often overlooking lived experiences of marginalized Indian communities.

Equality is enshrined in India's Constitution under Article 14, 15, and 21. Judgement of the Supreme Court like, Vineeta Sharma case, NALSA v. The Union of India and rulings such as *Vaijayanti Vasanta Mogli v. State of Telangana* (2023), which struck down colonial-era laws and mandated affirmative action as part of transgender welfare frameworks (Telangana High Court, 2023), cases like *Indian Young Lawyers Association v. State of Kerala*, that gave women's the rights to enter into Sabarimala temple, had created a great impact in gender equality. However, still the policy texts and institutional blueprints reflects gender biases. Welfare systems are poorly implemented funding too, is not done properly, for example, welfare board budgets for transgender persons, allocated annually, are scarcely spent (The Wire RTI analysis, 2024). Laws dealing with sexual violence continue to rely on binary i.e., male and female frameworks, and national surveys like the Census or NFHS still record only males and females, effectively erasing broader gender realities.

Since the 1990s, globalization has prompted Indian institutions to embrace more inclusive legal principles. Unfortunately, the road to substantive justice remains uneven, particularly for those persons who faces intersection of caste, class, and gender identity. Turning gender neutrality from eloquence into reality needs not only just reformed laws but comprehensive reconfiguration of data infrastructure, welfare delivery, educational access, and governance systems, grounded in local experiences and intersectional recognition.

Access to Justice Beyond Borders: Colonial Legacies and Global Norms of Gender

Neutrality

In present-day gender-justice debates, gender neutrality is seen in a largely progressive light, yet in countries like India, the legitimacy of that idea is challenged by colonial frameworks and strict social hierarchies. Before the advent of the British rule, gender systems tended to be fluid-nonconforming groups like Hijras had an institutional space, and matrilineal systems existed, say, in Kerala and Meghalaya (Narain, *Queer: Despised Sexuality, Law and Social Change*, 2004). The colonial legal code, on the other hand, set terms in binary categories of Victorian morality, criminalizing non-conforming identities. The Criminal Tribes Act (1871), in its recognition of the Hijras as inherently criminal. As personal laws became codified, they entrenched further patriarchal norms privileging male authority and biological essentialism.

These colonial-period laws still impart a great mark on modern Indian law, not only on the merits of law but also with respect to the categories through which rights are recognised. As Ratna Kapur states in *Erotic Justice: Law and the New Politics of Postcolonialism* (2005), reforms posing as neutral have actually worsened structural

exclusions to create the type of what she calls “erotic justice” turned sour. Under these circumstances, gender-neutral legislation that does not address social inequalities will serve to further marginalise the already displaced. The international legal setup of institutions like CEDAW has tried to promote gender justice but has been criticized for narrowly focusing on cisgender women while often neglecting non-binary and queer identities (Baxi, *The Future of Human Rights*, 2002). The Yogyakarta Principles (2006) provide a more inclusive approach and affirm the right to legal recognition irrespective of the person's gender identity. Yet this makes it non-binding and thus with little impact upon national law.

Legal theorists such as Chandra Talpade Mohanty, in her essay "Under Western Eyes" (1988), argue that global jurisprudence often mirrors Global North values, thereby erasing the lived realities of marginalised communities. Postcolonialism must also tell how global discourses, such as that of human rights, become the complicit agents of power, asserts Leela Gandhi while expanding on Postcolonial Theory (1998) And therefore, an access to justice should be historically conditioned, value culture, and remain structural-aware. Gender neutrality will surely be a good thing, but it cannot serve instead of gender justice, especially in societies where law has been around for exclusion.

Legal Foundation of Gender Neutrality in India

India's goal of gender equality is enshrined in their Constitution and supported by evolution in its legal framework that aim to treat all genders, male, female, and others, with respect and dignity. The concept of gender neutrality is often associated with rights for transgender and discriminated section like women, its foundation rest to ensure equal treatment for both men and women in law, and practice.

Now coming to Constitutional and Legal Framework with Judicial Scrutiny, Article 14 of the

Indian Constitution guarantees everyone- equality before the law and equal protection of the law. Article 15 further prohibits discrimination based on sex, a term which is interpreted to include gender, making sure that both men and women receive equal treatment of law.

Laws must be rooted in empowerment rather than protectionism. In *Anuj Garg v. Hotel Association of India*, the court struck down an excise law that prohibited women from working as guards where liquor was served, calling it paternalistic and discriminatory. It made a step towards equality in workspace.

Similarly, in *Vishaka v. State of Rajasthan*, the Court recognized that sexual harassment at workplace is a violation of women's fundamental rights under Articles 14, 15, and 21. This judgment laid the foundation for gender-sensitive workplaces and emphasized the State's duty to create equal opportunities for women. The case laid down Vishaka guidelines which turned into Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

Gender neutrality also implies that men not face legal disadvantages only due to assumptions. The debate around laws like Section 498A of the Indian Penal Code intended to protect women from dowry harassment, but has also led to concerns over misuses. In *Rajesh Sharma v. State of U.P.*, the Supreme Court laid guidelines to prevent arbitrary arrests under 498A, and arrest requires approval from senior police officers, so that protection of women must not lead to injustice for men. In *National Legal Services Authority v. Union of India*, the Supreme Court recognized transgender person as third gender and said Article 14, 19 21, includes individuals of all gender identities, repeating their right to equality & dignity. These interpretations lead to the Transgender Persons (Protection of Rights) Act, 2019, which legally recognized the rights of a person to identify as transgender. The Act prohibit discrimination in education, employment, healthcare, and access to public spaces, promoting a more holistic and inclusive approach to gender neutrality not only focusing on the third gender but striving for fairness across all genders.

The policies had played a great role in ensuring welfare step to promote equality by doing Positive Discrimination, schemes like Beti Bachao Beti Padhao aim to empower girl child through education and awareness, while workplace reforms like equal pay and maternity benefits under the Maternity Benefit (Amendment) Act, 2017. In *Ministry of Defence v. Babita Punya* case, the Apex Court extended the right to Permanent Commission in the Indian Army to women.

Gender Neutrality and Criminal Law

The Indian criminal justice system, as deeply entrenched as in its Constitution which guarantees of equality, continues to keep abreast of gender-biased rape laws. The definition of rape under Section 375 of the Indian Penal Code (IPC) or Section 63 (BNS) as an offence of sexual intercourse by a man with a woman unwillingly and disregarding male and transgender victims is such a gender biased law. The absence of a gender-neutral scheme of sexual offences leaves a vast section of the population vulnerable and invisible in the current legal framework.

Article 14 of the Indian Constitution incorporates the spirit of equality before law and Article 21 the right to life and liberty, including the right to live with dignity. The Supreme Court in its forward-looking judgments has enlarged the scope of the rights so as to encompass persons on either side of the gender divide in *NALSA v. Union of India*. Despite such advancements, Section 375 IPC is gender-specific in a stringent way.

In *Joseph Shine v. Union of India*, the Supreme Court decriminalized adultery and observed that the legal provision under Section 497 IPC was patriarchal and lacked giving control of their own choices to women. The Court emphasized removing archaic gender roles and applying an egalitarian policy of interpreting the law. Similarly, in *Navtej Singh Johar v. Union of India*, the Court struck down Section 377 IPC to the extent of criminalizing sexual conduct between consenting adults of the same sex.

The *Bhartiya Nyaya Sanhita* (BNS), 2023 aspires to modernize India's criminal code and has proposed gender-neutral language in its draft provisions. If the reform works well, it would be a landmark towards inclusivity in sexual offence laws. However, the mere replacement of gendered pronouns alone is insufficient.

The current law of rape in BNS is a narrow, binary construction of gender that humiliates the values of equality and dignity guaranteed by the Constitution. Complete legal change in terms of gender-neutral definitions, sensitization of law enforcers, and engaging marginalized constituencies in policy-making is required.

Gender Neutrality In Public Policy & Governance

Gender neutrality in Indian public policy and governance would aim at developing laws, policies, and practices that are inclusive and treat all individuals equally, irrespective of gender identity. Ideally, gender neutrality posits that laws and policies apply with implacability to a person regardless of gender, thus affording levels of equal treatment and opportunity to all members of society. Like stated earlier, India has no designated or specific Gender-Neutrality Bill per se but, despite this, most Indian legislations apply to all genders, and there are very many provisions and policies advocating for Gender Equality as well as Gender Neutrality. Some of the most important of these are: The Constitution of India (1950), While this does not clearly state gender neutrality, it covers many provisions for equality, attempting to eliminate discrimination based on religion, race, caste, place of birth, sex, or any of them. There are also provisions in the Indian Constitution permitting the formulation of gender-specific policies for the upliftment of marginalized genders.

Article 14 of the Indian Constitution prescribes for equality before the law offering one of its principles-the Rule of Law. Every person is considered equal before the law and shall be entitled to equal protection under the law within the territory of India. This fundamental right can be invoked by any person within Indian territory irrespective of whether he or she is an Indian citizen or not. In the landmark *NALSA* case, the Supreme Court recognized the difficulties faced by the transgender community for the non-recognition of their gender and held that such discrimination and stigmatization on the basis of gender is against Article 14 as well as Article 21.

Article 16 of the Indian Constitution is about the fundamental right to equality concerning employment. That particular working of the constitution speaks about public employment and demands that the state give equal opportunity to every citizen for appointment or employment to any office under it, no disturbing or hindering on the basis of religion, race, caste, sex, descent, place of birth, etc., except the grounds of required qualifications.

In India, so many laws exist but none providing the impotent justice. We have seen several policies and initiatives that are detrimental to either one gender community (whether Male or Transgender). Something must change in the law practice for people to actually receive justice. In general, India is a nation with a very diverse framework of policies and laws. Many of these have, although, historically leaned in Favor of one gender-mostly women-and against the interests of men and transgender individuals in the country. In order for true equality and justice to be established, the state may want to contemplate coming up with one common Gender Neutrality Bill to check on gender-based discrimination against anyone.

Mapping Gender Neutrality through Statistical Evidence

Gender neutrality via data is crucial in ensuring an inclusive good governance, equitable policy making, and proper social representation of all genders. Official data system like Census of India, NFHS (National Family Health Survey), and NSSO surveys, are some bodies that still function in a binary mode of 'male' and 'female' without taking into consideration the existence of transgender, non-binary, and gender-diverse persons. The lack of inclusive gender categories in data collection not only erases the identities of marginalized groups but also constrains the scope of useful public policy. Whereas India legally acknowledged a 'third gender' in 2014, this has yet to be meaningfully incorporated into the country's statistical and administrative core systems.

International experiences provide valuable lessons. Other nations like Scotland and Australia, have shifted towards gender-inclusive information through the inclusion of the non-binary options also and a two-step approach questioning sex assigned at birth and one for current gender identity. These methods enhance data accuracy and value people's identity, and they did not have a negative impact on the level of participation. Studies confirm that transgender people experience greater amounts of mental health issues, joblessness, and social exclusion; metrics that are invisible in binary-constrained surveys. In India, available NFHS data confirm profound gender differences even among the binary definition: more than 29% of women experience domestic violence, and just 71% engage in household decision-making. But even these numbers do not provide enough data about the situation of more-marginalized communities like nonbinary and trans-genders because they are virtually excluded from survey questions. In order to progress towards gender-neutral data systems, India needs to reform its survey methodology by providing several gender choices, gender sensitivity training for enumerators, and maintaining respondent confidentiality. Data collection agencies are supposed to engage more with gender-diverse communities and people of all gender identities to maintain respectful representation and to safeguard their liberty and dignity. Disaggregated gender data publishing would enable policymakers, civil society, and public institutions to respond to inequalities more comprehensively. Without inclusive data, social justice and equitable development will be unattainable.

Gender Neutrality and Justice in India in the Age of Globalization (Post-1990s)

Globalization and norms of international human rights have significantly influenced India's efforts in creating a gender-neutral justice system accessible to all genders. International legal framework like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and UDHR had given shape to Indian legal reforms, to encourage inclusivity beyond the traditional male-female gender identities.

A landmark case in the Supreme Court of India in 2014 i.e., *NALSA v. Union of India*, which recognized transgender persons as a third gender, recognizing their rights under Article 14 and 21 of Indian Constitution, it mandated legal recognition and protection of transgenders aligning with international human rights standards. This judicial precedent paved a way for the Transgender Persons (Protection of Rights) Act of 2019, whose objective was safeguarding the rights of individuals of different gender identity.

India has been a signatory of Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and discourse on Human Rights that has fostered greater recognition of intersection in society and promoted inclusivity in access to justice. For example, A Dalit Transwoman faces both gender and caste-based form of discrimination, which limit their access to legal aid and fair trials.

Women Rights also got its recognition after globalization like the 2005 Amendment in Hindu Succession Act gave females equal coparcener right as a male and recognized girls right on their father's property by birth.

Globalization had promoted individual and civil rights across the world and it affected Indian legal system too. However, there still remains social stigma and biases which are yet to be removed from socio-legal sphere. In conclusion, globalization and human rights recognition have pushed India's justice system since the 1990s towards greater gender neutrality, inclusivity and accessibility. However, more continuous reforms, societal sensitivity, and robust enforcement of existing laws are essential for a just and fair environment.

Conclusion

The Indian judiciary has observed a progressive evolution in the interest of constitutional ideals conjuring equality, freedom, and dignity of every individual, irrespective of gender. This change came about due to both legislative and judicial deterrents that encompass dismantling patriarchy-oriented laws; judicial emancipation of transgender rights; and in attempting the annulling of legal disabilities that men had supported in the past. Both the legislature and the judiciary have done good work in putting together more just laws in line with the progressive jurisprudence of the Constitution. However, repealing some laws like those of Bhartiya Nyaya Sanhita (BNS) laws of rape, which give a binary and exclusionary construction of gender, is far from reality. It subtracts rights from men and trans people and is against equality and dignity. It, therefore, calls for a complete overhaul concentrating on gender-neutral language, along with the sensitization of law-enforcers, adding inputs from marginalized populations themselves in policymaking. No matter its varied history, the Indian law retains gender-specific laws leaning against women while almost excluding all other genders. True equality and justice can be upheld only if the state accepts to enact comprehensive Gender Neutrality Bill for the welfare of all individuals irrespective of their gender. For achieving true justice and equality, India must now move forward toward comprehensive gender neutralism.

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