

## WHERE LAW FAILS TO BE GENDER NEUTRAL?

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### ABSTRACT

The Constitution of India ensures equal rights to every citizen of India despite the differences prevailing between them. For instance, Article 15(1) deals with protection against discrimination. No person can be violative of a person's fundamental right on the grounds of race, religion, place of birth and gender<sup>1</sup>. However, is it absolute? 'Gender' in the Indian legal system plays a major role as a result of its History. Women in pre-independent were ill-treated. This practice in the form of oppression exists in some parts of India till date. As a result, so many laws are exclusively enacted to protect their rights, which by default push a person of any other gender into a disadvantage. This article dives deep into the need of Gender Neutral Laws in India.

**Keywords:** Gender-Neutral Laws, Misconception of Feminism, Gender Discrimination.

### INTRODUCTION

The Constitution of India stands as a beacon of equality, ensuring fundamental rights for all citizens, regardless of differences. Article 15(1) particularly addresses the prohibition of discrimination based on factors such as race, religion, place of birth, and gender. However, despite these constitutional safeguards, the Indian legal system's historical focus on gender-specific laws has inadvertently led to a bias. The problem does not end with the violation of fundamental rights but it is deeper. It makes one gender legally inferior to the other. Precisely, victimization and justice stands on the wrong side of the scales for the reason being lack of gender-neutral laws. This article delves into the imperative for gender-neutral laws in India, aiming to rectify existing inequalities and misconceptions surrounding feminism.

### HISTORICAL CONTEXT

The Indian legal system's approach to gender has been profoundly influenced by historical norms and patriarchal values. Women, particularly in pre-independent India, were often subject to various forms of discrimination and oppression<sup>2</sup>. Sati Pratha, female infanticide, lack of education and property rights, domestic violence and so on. Consequently, a series of laws were introduced to

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<sup>1</sup> INDIA CONST. art. 15(1)

<sup>2</sup> Radhika Kapur, University of Delhi, Status of Women in Pre-Independence India

safeguard women's rights, reflecting a significant step towards gender equality. However, with the passage of time and the dynamic society the exclusive focus on women's rights has inadvertently perpetuated a gender bias, leaving individuals outside the binary spectrum at a disadvantage.

### **CHALLENGING GENDER STEREOTYPES**

The conception of feminism and gender equality extends beyond advocating solely for women's rights. It involves challenging traditional gender roles and stereotypes that confine both women and men to predefined roles. The need for gender-neutral laws arises from the recognition that these stereotypes are not only harmful to women but also to individuals who do not conform to traditional gender norms. Misconceptions about feminism often overlook the fact that gender-neutral laws can help dismantle these stereotypes and create a more inclusive society.

### **MISCONCEPTIONS SURROUNDING FEMINISM**

The general meaning of feminism is 'Providing equal opportunities to any person in spite of their gender'. Later on, the meaning of this word is interchangeably used with 'Female superiority over men'. Misconceptions about feminism have often fueled resistance against gender-neutral laws. Many people still view feminism as a movement that promotes female dominance over men or the disregard of men's rights.<sup>3</sup> This situation has pushed several men into the situation of helplessness. However, the core of feminism lies in advocating for equal rights and opportunities for all genders. Women, on the other hand, being in the good books of law certainly misuses the exclusive rights given to them. It seeks to dismantle patriarchal structures that perpetuate gender-based discrimination and stereotypes. By addressing these misconceptions, society can better understand the importance of gender-neutral laws and their role in achieving equality.

### **PARENTAL AND MARITAL RIGHTS**

Gender-neutral laws would also address issues related to parental and marital rights. Traditionally, these rights have been allocated based on gender roles, assuming that women are the primary caregivers and men the primary breadwinners. This approach not only disregards the evolving dynamics of modern families but also puts unnecessary pressure on individuals to conform to these roles. Gender-neutral laws would ensure that parental and marital rights are allocated based on an individual's abilities and choices rather than their gender.

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<sup>3</sup> Rana Bou Saleh, Gender, Sexuality & Relationships, Feminism 101: 10 Misconceptions About Feminism

### **IMPACT ON MEN**

Gender-specific laws inadvertently reinforce the perception that only women require legal protection, neglecting the struggles faced by men. For example, laws dealing with domestic violence and sexual harassment are often gender-biased, assuming that only women can be victims. This overlooks the experiences of men who may also be victims of such offenses. There are several cases out there where men are being harassed sexually by a woman or by another man. These offences are not taken into consideration as, according to the legislation, men are destined to be the offenders and women to be the victims in any cases related to sexual harassment or domestic violence. Gender-neutral laws would acknowledge and provide support for all survivors regardless of their gender, erasing the stigma that surrounds male victimhood.

### **LGBTQ+ RIGHTS AND GENDER NEUTRALITY**

The LGBTQ+ community faces a unique set of challenges when it comes to legal recognition and protection. The existing legal framework largely fails to address their concerns adequately. Gender-neutral laws would not only protect LGBTQ+ individuals from discrimination but also enable them to access essential services and rights without being confined to traditional gender categories. This inclusivity aligns with the core principles of feminism and promotes a more just and equitable society.<sup>4</sup>

### **GENDER-NEUTRAL LAWS: AN IMPERATIVE FOR EQUALITY**

Gender-neutral laws are legal provisions that do not differentiate between genders, treating all individuals equally under the law. These laws are crucial for establishing a just and fair society where everyone, regardless of gender, enjoys the same rights and responsibilities. India's legal framework has made strides in this direction, yet there remains a gap between legal provisions and their effective implementation. Gender-neutral laws are needed to bridge this gap and ensure that women and men are equally protected under the law.

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### **CHALLENGES IN IMPLEMENTING GENDER-NEUTRAL LAWS**

The implementation of gender-neutral laws in India faces several challenges, one of which is the misconception that these laws undermine men's rights. This misconception arises from a misunderstanding of feminism as solely concerned with women's advancement. In reality, gender-neutral laws benefit both men and women by dismantling gender stereotypes and ensuring equal

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<sup>4</sup> Adab Singh Kapoor, POSH Act : Discussing Gender Neutrality, Transgender Rights & Inclusion Of LGBTQ, Live Law

treatment. Overcoming this challenge requires comprehensive education and awareness campaigns that clarify the true objectives of feminism and gender-neutral legislation.

### **BREAKING STEREOTYPES: EMPOWERING MEN AND WOMEN**

One significant benefit of gender-neutral laws is their potential to break down harmful stereotypes that limit both men and women. By addressing issues such as domestic violence, workplace discrimination, and parental rights in a gender-neutral manner, these laws promote the idea that individuals are not confined by traditional gender roles. For instance, laws providing equal access to parental leave for both parents challenge the stereotype that caregiving is solely a woman's responsibility. This empowers men to take an active role in childcare and household duties while enabling women to pursue their careers without prejudice.<sup>5</sup>

### **ECONOMIC IMPACT AND SOCIETAL PROGRESS**

Gender-neutral laws can also have a positive impact on India's economy and overall societal progress. When both men and women have equal access to opportunities, the workforce becomes more diverse and skilled, driving economic growth. Moreover, when gender stereotypes are challenged and dismantled, it leads to a more inclusive and harmonious society. This is particularly relevant in a diverse country like India, where different cultures and traditions intersect.

### **LEGISLATIVE REFORMS FOR GENDER NEUTRALITY**

<sup>6</sup>In order to address the misconception of feminism and promote gender-neutral laws, India must undertake certain legislative reforms:

1. **Awareness Campaigns:** Launch comprehensive awareness campaigns that educate the public about the true goals of feminism and gender-neutral laws. These campaigns can help dispel misconceptions and foster support for legal reforms.
2. **Legal Amendments:** Revise existing laws to ensure they are truly gender-neutral, avoiding language that perpetuates stereotypes. This includes laws related to marriage, divorce, inheritance, and property rights.
3. **Equal Representation:** Encourage equal representation of women in legislative bodies to ensure that laws are formulated with a balanced perspective, considering the needs of all genders.
4. **Enforcement Mechanisms:** Strengthen enforcement mechanisms to ensure that gender-neutral laws are effectively implemented and violations are addressed promptly.

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<sup>5</sup> Lisar Morina, Breaking Gender Stereotypes, [unicef.org](http://unicef.org)

<sup>6</sup> [adb.org](http://adb.org), Gender-Inclusive Legislative Framework and Laws to Strengthen Women's Resilience to Climate Change and Disasters

5. **Education and Training:** Integrate gender sensitivity training into educational institutions and workplaces to promote a culture of respect and equality.

### CONCLUSION

In a nation as diverse as India, misconceptions about feminism have impeded the progress towards gender-neutral laws. It is imperative to address these misconceptions through education, awareness, and legal reforms. Gender-neutral laws not only uphold the principles of justice and equality but also have far-reaching benefits for the economy and society as a whole. By understanding the true essence of feminism and its goals, India can take significant strides towards creating a more inclusive and equitable future for all its citizens.

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