

Researching Gender-Based Legal Protections Against Domestic Violence In India And Other Countries

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Abstract

The question of whether Indian law is genuinely gender-neutral remains grave in the context of child protection and domestic violence. Although the Protection of Women from Domestic Violence Act, 2005 (PWDVA) offers important remedies but restricts its scope to women as aggrieved persons, thereby excluding men, transgender, and gender-diverse individuals from equal statutory protection. The Protection of youngsters from Sexual Offences Act, 2012 (POCSO), adopts genderless framework, recognizing that boys, girls, and gender-diverse children can all be victims of abuse, often within domestic spaces. This divergence reveals a doctrinal inconsistency in India's legal approach, where inclusive child-protection legislation coexists with gender-specific domestic-violence laws. This research examines whether India's domestic-violence framework can be considered truly inclusive and compares it with international models in Canada, South Africa, the United Kingdom, and Singapore, where gender-neutral and family-centric approaches have been progressively adopted. Using a doctrinal and constitutional analysis of statutory provisions, judicial precedents, and international human-rights standards, combined with an empirical lens through case law, survivor narratives, and institutional data, the study argues for harmonizing the PWDVA with POCSO's inclusive protections. The paper proposes phased statutory and institutional reforms to create a comprehensive, gender-inclusive domestic-violence framework, ensuring substantive equality and alignment with evolving global trends.

Introduction

In all phases of the criminal justice process—definition of offenses, investigation, prosecution, evidentiary rules, sentencing, and victim support—gender-neutral law aims to guarantee that the protection of legal frameworks is extended to every individual, regardless of their biological sex, self-identified gender, or sexual orientation. Gender neutrality has become a standard in modern communication, aligning with international human rights commitments and constitutional guarantees for dignity. However, India's legal system employs a patchwork approach. While protective regimes such as the Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 are still explicitly gender-specific and only benefit women, child-protection laws such as the Protection of Children from Sexual Offences Act, 2012 (POCSO) follow a completely gender-neutral approach. Most crucially, the Indian Penal Code has been superseded by the Bharatiya Nyaya Sanhita, 2023, yet unlike the comprehensive, gender-neutral provisions of POCSO, the BNS continues to take a predominantly gender-specific approach in its sections dealing with sexual offenses.

This fragmented architecture results in doctrinal contradictions and practical gaps, particularly for adult male, transgender, and gender-diverse victims of sexual offenses, who are either under protected or completely excluded from the statutory framework. At the same time,

jurisprudential advances in *NALSA v. Union of India*¹ and *Navtej Singh Johar v. Union of India*² highlight the constitutional responsibility to provide equality and protection to all individuals, no matter their gender identification. Against this backdrop, the current paper examines the efficacy of India's current gender-neutral legal framework, comparing it to international processes used in Canada, South Africa, the United Kingdom, and Singapore. This paper uses doctrinal and constitutional analysis, as well as a proposed empirical research design, to determine whether India's current approach meaningfully advances gender neutrality principles, or whether deeper reforms are required to realize the constitutional promise of equality and align with evolving global standards.

Conceptual And Theoretical Framework

A serious investigation of gender-neutral law necessitates a structured conceptual framework that goes beyond the language of statutes to investigate how law is applied in practice and whether it effectively advances justice. For this end, the study employs three interconnected lenses—Substantive Equality, Structural Justice, and Intersectionality—each rooted in constitutional theory and socio-legal literature.

- **Substantive Equality**

While formal equality assures equal treatment before the law, substantive equality necessitates that the law takes into account structural obstacles and ensure that people receive equivalent protection and accountability, regardless of gender. In the context of sexual offenses, this principle requires equal access to remedies for male, female, and transgender victims, as well as holding offenders of all genders to the same degree of criminal responsibility.

- **Structural Justice**

Structural justice shifts the emphasis away from individual cases and toward the overall institutional framework of the legal system. It inquires if procedures, institutions, and remedies reduce secondary victimization and promote fair access to justice for all genders. This includes trauma-informed police, inclusive evidentiary rules, survivor-friendly trial procedures, and effective victim assistance services.

- **Intersectionality**

Kimberlé Crenshaw coined the term "intersectionality," which emphasizes how experiences of discrimination and vulnerability are shaped by the intersection of many identities, such as gender, caste, class, sexuality, disability, and marital status. In India, the vulnerability of a transgender Dalit survivor of sexual violence differs significantly from that of an upper caste urban lady. Intersectionality thus serves as an important analytical tool for determining whether laws and institutions appropriately address these multiple forms of marginalization.

- **Indian Statutes Application this Study**

Together, these lenses allow for a holistic assessment of India's legal framework on sexual offenses. Substantive equality emphasizes doctrinal inclusions and exclusions in statutory texts, structural justice investigates institutional arrangements, and intersectionality reveals how multiple identities interact with the legal system in practice. This composite paradigm is applied to both national and international comparators, allowing the study to evaluate not only the availability of gender-neutral legislation, but also their effectiveness in achieving real-world justice.

¹ (2014) 5 SCC 438

² (2018) 10 SCC 1

International Comparators

A comparative analysis of various frameworks finds disparities in approaches to the recognition and enforcement of gender-neutral sexual offenses. While the shared goal across jurisdictions is to achieve inclusivity and equal protection, doctrinal methodologies and statutory formulations vary greatly. These models offer instructive paths for India, both in terms of substantive design and institutional practice.

- **United Kingdom**

The Domestic Violence Act, 2004³ in UK was a big stride forward for English criminal law, strengthening protections against domestic violence and expanding victims' rights. The Act established new charges for coercive control, broadened restraining and non-molestation orders, and promoted victim support through multi-agency frameworks. Unlike gender-specific rules, the UK takes a gender-neutral approach, allowing men, women, and persons of all gender identities to seek protection and remedies.

The UK approach is often regarded as gender inclusive, balancing criminal punishment and victim-support measures. The statutory structure prioritizes a holistic structure for all survivors of Household violence by prioritizing family-centric protection over gender-based categories.

- **Canada**

Canada enacted significant steps to address domestic abuse, including civil and criminal measures. Even though there is no discrete domestic violence violation in the **Criminal Code**⁴, a number of sections apply to intimate partner abuse, including assault, uttering threats, harassment, forceful detention, and sexual assault. Because these offences are expressed in gender-neutral language, they apply to all victims and perpetrators, regardless of sex or gender identity. **The Domestic Violence and Stalking Act in Manitoba**⁵ and the **Domestic Violence Intervention Act in Nova Scotia**⁶ are two examples of provincial laws that address domestic violence and are family and community-based. These include victim support, emergency protective orders, and family-centred remedies.

- **South Africa**

The Domestic Violence Act of 1998⁷ is a Groundbreaking law in South Africa intended to protect victims of domestic violence. The Act employs the gender-neutral term "domestic violence," which encompasses harassment and intimidation in a range of domestic contexts, as well as bodily harm, coerced sexual activity, mental harassment, abusive language, coercive control, and economic deprivation. Every individual, regardless of gender or sexual orientation, are eligible for protection orders under the Act, which protects both men and women as well as LGBTQ+ people.

South Africa's post-apartheid constitutional commitment to equality, decency, and nonviolence inspired this legislation. Courts have generally interpreted the Act in conformity with constitutional rights, emphasizing substantive equality while also noting survivors' structural vulnerabilities. The South African approach is widely regarded as one of the most

³ Domestic Violence, Crime and Victims Act 2004, c. 28 (U.K.)

⁴ Criminal Code, RSC 1985, c C-46

⁵ CCSM c D93 (Man)

⁶ SNS 2001, c 29 (NS)

⁷ Act 116 of 1998 (South Africa)

progressive in the Global South, **integrating gender-neutral** legislation design with a rights-based approach to addressing domestic abuse.

- **Singapore**

Women's Charter of Singapore⁸, which includes provisions for protection orders, expedited orders, and mandated counseling for offenders, has long been the primary statute addressing domestic abuse. Although the Charter was originally presented in gendered terminology, subsequent updates have transformed it to a framework that is more family-centric and gender-neutral. The law now covers physical, mental, psychological, and financial abuse under the broad concept of "family violence," and it protects not only wives but also husbands, kids, parents, and other family members.

Modifications implemented in 2019 bolstered these safeguards by broadening the scope of protection orders, tightening enforcement procedures, and expanding victim support services⁹. In practice, the Women's Charter functions as a gender-inclusive domestic violence law, ensuring that men, women, and persons of all gender identities have access to remedies for abuse in the home, even if the statute's original name remains unchanged.

India'S Current Legal Architecture

The legal system in India for sexual offenses shows a disjointed and unequal path to gender neutrality. Some laws continue to incorporate gendered presumptions regarding offenders and victims, resulting in doctrinal contradictions and leaving large gaps for survivors who are masculine, transgender, or gender nonconforming, even when other laws embrace inclusive terminology and victim protection. *Kusum Narottamdas Harsora v. Hiral P. Harsora*¹⁰ the conflict started in a family when a mother (Kusum Narottamdas Harsora) complained about her sons and daughters-in-law under the (PWDVA)¹¹. The respondents contended that female relatives could not be pursued since the term "respondent" was restricted to a "adult male person" under Section 2(q) of the PWDVA. This led to an anomaly: the term did not apply to women, who might also be the ones who commit domestic violence (e.g., mother-in-law). The Supreme Court declared that the phrase "adult male" in Section 2(q) violated Articles 14 and 15 of the Constitution and hence was invalidated. According to the Court, limiting the concept of "respondent" to adult males was capricious and left out numerous real-life instances of domestic violence committed by female or child family members. Following this decision, anyone can be considered a respondent under the PWDVA, regardless of gender. Men cannot seek remedies under the Act, nevertheless, because women are still the only ones who meet the criteria of "aggrieved person" (victim) under Section 2(a).

*Arnesh Kumar v. State of Bihar*¹² In the instance of Arnesh Kumar, his wife filed a complaint alleging dowry demands under Section 4¹³ and Section 498A¹⁴, both of which address cruelty by spouses or relatives. Following his arrest, the husband requested anticipatory bail, which was later denied by both the Sessions Court and the High Court. The Supreme Court addressed the abuse of 498A IPC and the police's practice of arresting husbands and family members without conducting full investigations. The Supreme Court

⁸ 1961, Cap. 353 (rev. ed. 2009) (Sing.)

⁹ Women's Charter (Amendment) Act 2019, No. 27 (Sing.)

¹⁰ (2016) 10 SCC 165

¹¹ Protection of Women from Domestic Violence Act 2005 (India)

¹² (2014) 8 SCC 273

¹³ Dowry Prohibition Act 1961

¹⁴ Indian Penal Code 1860

clarified that automatic arrests violated Article 21's protection of personal liberty and that 498A had become a frequently abused law. Required instructions issued in accordance with Section 41 CrPC:

- Police must prepare a checklist and record reasons for arrest.
- Magistrates must ensure due compliance before authorising detention.
- Failure to follow these directions would invite departmental action against erring officers.

This case became the leading precedent to curb arbitrary arrests in matrimonial disputes, balancing protection for genuine victims with safeguards for accused men.

- **Bharatiya Nyaya Sanhita (BNS) 2023: Core Sexual-Offence Provisions**

This act succeeded the colonial-era Indian Penal Code, 1860, has measures addressing domestic abuse, including as assault, illicit intimidation, cruelty by a husband or relatives (Section 85), and dowry harassment. Section 85 in particular retains a **gender-specific formulation**, penalizing “cruelty by the husband or his relatives” against the wife. This restricts legislative acknowledgment of domestic violence to female victims, thereby excluding men, transgender persons, and gender-diverse individuals from protection within the criminal framework.

Thus, while BNS modernizes certain aspects of criminal law, its core sexual-offence framework remains gender-specific, reinforcing outdated binaries of male offenders and female victims.

- **POCSO 2012: Ensuring Inclusive Protection for Children Against Sexual Offences**

In contrast, (POCSO)¹⁵ has a completely gender-neutral approach. The Act defines a child as “any person under the age of eighteen years” and makes both penetrative and non-penetrative sexual assaults illegal, regardless of the victim's or offender's gender.

POCSO is so frequently lauded as a model statute for gender neutrality in the Indian setting. However, it only applies to children, leaving a normative gap after survivors reach adulthood. The juxtaposition of POCSO and the BNS¹⁶ reveals a stark doctrinal disparity: children are recognized as victims regardless of gender identity, whereas adult male and transgender victims are invisible in the legislative text.

- **Women-Specific Protection Laws**

Alongside these statutes, India has developed a set of women-specific protective laws that explicitly target structural disadvantages faced by women in domestic and workplace spheres. The act safeguarding Sexual Harassment¹⁷, limits its scope to “aggrieved women” as complainants, excluding men and transgender people who may encounter workplace harassment. Similarly, Act of 2005 (PWDVA) establishes a strong civil-protective mechanism for women who have experienced household violence, which includes physical, sexual, emotional, and financial abuse. Courts have broadly interpreted the PWDVA, but its protections are nonetheless unavailable to men or transgender survivors in personal or familial situations.

¹⁵ the Protection of Children from Sexual Offences Act of 2012

¹⁶ Bharatiya Nyaya Sanhita 2023 (India)

¹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

These statutes prioritize targeted gender protection over neutrality, as justified by historical patterns of women's subjugation. However, their exclusivity raises concerns about whether the law appropriately addresses the changing social realities of diversified victimization.

• Constitutional and jurisprudential background

Over the last decade, Indian constitutional doctrine has significantly increased awareness of gender and sexual diversity. In *NALSA v. Union of India*¹⁸, the court explicitly recognized transgender people as a different gender category, thus extending constitutional guarantees of equality, liberty, and dignity to them. In *Navtej Singh Johar v. Union of India*¹⁹, the Supreme Court overturned Section 377 of the IPC, which criminalized consenting same-sex activity. The decision was based on constitutional morality and the fundamental right to privacy, establishing sexual autonomy as an aspect of individual liberty.

The Supreme Court's jurisprudence demonstrates a developing but unequal approach to equity in gender-based offenses. In *Arnesh Kumar v. State of Bihar*²⁰, the Court acknowledged the widespread misuse of **Section 498A IPC**²¹ and established required rules under **Section 41 CrPC**²² to prohibit arbitrary arrests of spouses and their families, therefore providing vital procedural protection to accused men. Similarly, in *Rajesh Sharma v. State of Uttar Pradesh*²³, the Court went a step further, recommending the formation of Family Welfare Committees to review allegations prior to arrests—an attempt to strike a compromise between women's safety and safeguards against male harassment. Though largely mitigated subsequently, these directives expressed court concern about equality before the law under Article 14²⁴ when protection statutes were disproportionately applied to one gender.

On the other side, *Kusum Lata Sharma v. State (Delhi High Court, 2011)*²⁵ demonstrated that even female relatives (such as daughters-in-law or mothers-in-law) can commit domestic violence, demonstrating that abuse is not restricted to male abusers. Collectively, these cases demonstrate that, while criminal law continues to embed gendered categories in substantive offences such as rape under Section 375 IPC, the judiciary has attempted to instill an equity approach procedurally—protecting men from abuse and acknowledging non-male perpetrators—without yet creating a fully gender-neutral victim framework.

Reform Options For India

To achieve a truly gender-neutral framework for sexual offenses in India, a phased strategy is required that bridges doctrinal differences, harmonizes protective regulations, and alters institutional practice. Three phases of reform are recommended, based on comparable models and constitutional mandates.

Phase I: Filling up Coverage Deficits

Resolving statutory exclusions inside the BNS is the top priority.

¹⁸ (2014) 5 SCC 438

¹⁹ (2018) 10 SCC 1

²⁰ (2014) 8 SCC 273

²¹ Indian Penal Code 1860,

²² Code of Criminal Procedure 1973

²³ *Pradesh* (2017) 8 SCC 746.

²⁴ Constitution of India, art 14

²⁵ *Kusum Lata Sharma v State* 2011 SCC Online Del 3216

- Establish a gender-neutral adult penetrative sexual assault offense: Like Canada and South Africa, India should do away with the gendered definition of rape and replace it with a gender-neutral provision. This would hold criminals of all genders accountable while providing protection to survivors who are male, transgender, and gender nonconforming.
- Eliminate or modify the marital-rape exception: In accordance with international human rights norms and constitutional equality, Exception 2 to Section 63 of the BNS should be removed in order to acknowledge the autonomy and dignity of married women.
- Codify consent standards: By clearly defining what constitutes "consent," including the acceptance of force, intoxication, and incompetence, Indian law would be more in line with global best practices and judicial interpretations would be less inconsistent. These reforms address foundational doctrinal gaps, ensuring baseline equality in substantive protection.

Phase II: Harmonizing Ecosystem Laws

India's protective environment is still disjointed outside of the criminal code, with certain laws that are women-specific (PWDVA, POSH) and others that are gender neutral (POCSO). For the legal system to be coherent, harmonization is required.

- To ensure equal protection from workplace exploitation, the POSH Act should be updated to include protections against workplace harassment for men, transgender people, and non-binary people.
- Equal protection for both sexes against domestic abuse: Either the PWDVA itself should be modified to be more inclusive, or a civil-protective law based on the PWDVA should be developed for male and transsexual survivors. While allowing affirmative action for women in acknowledgment of structural disadvantage, such revisions would bring legislative design into line with constitutional equality.

Phase III: Institutional and Practice-Based Reform

To guarantee successful implementation, doctrinal reform must be accompanied by institutional transformation.

- Specialized, gender-inclusive SGBV units: Police and prosecutorial wings must to set up specialized SGBV units that are educated in trauma-informed investigation and inclusive practices.
- All-inclusive survivor services: To prevent the re-victimization that is frequently connected to obtaining justice, survivors of all genders should be provided with medical, psychiatric, and legal support services.
- Gender-disaggregated data architecture: To support evidence-based policy and systemic bias monitoring, the National Crime Records Bureau (NCRB) and other organizations shall gather and disseminate data broken down by gender identification.

Design Of Proposed Empirical Research

Empirical support is needed for India's normative rationale for gender-neutral legislation. In order to assess whether gender neutrality in the law results in better access to justice, equitable outcomes, and survivor confidence across genders, this study suggests a mixed-method research methodology.

Research Objective

The purpose of the study to evaluate the effectiveness of gender-neutral legal frameworks in enhancing male domestic abuse survivors' access to justice in India.

Questions for Research

1. Do cases of domestic abuse against males have higher reporting and conviction rates when gender neutrality is incorporated into the development of statutes?
2. Do male survivors believe that inclusive judicial systems provide them with better access to justice?
3. How are gender-neutral legislation interpreted and applied in cases of domestic abuse against males by institutional actors such as the judiciary, prosecutors, and police?
4. How do the lived realities of male survivors of domestic abuse differ from formal statutory inclusivity?

Research Design And Methods

1. Doctrinal & Policy Audit

Conduct a comprehensive audit of the BNS 2023, POCSO Act 2012, POSH Act 2013, PWDVA 2005, and police/prosecution Standard Operating Procedures (SOPs).

Identify points of gender neutrality, gender-specificity, and legal silence.

Benchmark these findings against constitutional guarantees of equality (Articles 14, 15, 21).

2. Comparative Drafting Analysis

Systematically analyze statutes from the United Kingdom, Canada, South Africa, and Singapore.

Employ a comparative law coding scheme to identify drafting techniques (gendered language, inclusive definitions of consent, marital-rape provisions).

Generate reform templates for India.

3. Fieldwork: Stakeholder Interviews

- Semi-structured interviews with survivors (male, female, transgender), NGOs, prosecutors, and police officials.
- Explore barriers to reporting, treatment within the system, and perceptions of inclusivity.
- Employ purposive sampling to ensure diversity across caste, class, and urban/rural contexts.

4. Case-File Analysis

- Collect and analyze anonymized case files from trial courts and police stations across multiple states.
- Compare charging, attrition, and conviction patterns for gendered vs. gender-neutral statutes.
- Use quantitative coding to identify trends in institutional handling of survivors across genders.

5. Perception Surveys

- Conduct large-scale surveys among law students, young professionals, and community groups to assess:
 - Awareness of gender-neutral provisions.
 - Willingness to report under inclusive vs. gendered regimes.
 - Perceptions of fairness, inclusivity, and deterrence.

Methodological Contribution

By combining doctrinal analysis, comparative law, and socio-legal fieldwork, this study moves beyond purely theoretical critique to offer a holistic assessment of India's partial gender-neutrality. It will thereby demonstrate how legal design interacts with lived experience, offering reform pathways grounded in both constitutional principle and empirical reality.

References

1. Kapur, Ratna. *Gender, Alterity, and Human Rights: Freedom in the Fishbowl*. Edward Elgar, 2018.
2. Flavia Agnes, "Constitutional and Legal Challenges to Marital Rape in India" (2019) *Economic & Political Weekly* 54(3): 41.
3. Aparna Chandra's "The Mirage of Gender Neutrality: Sexual Violence and the Limits of Law Reform." *Orient Blackswan*, 2017.
4. Brenda Cossman: "Sexuality, Queer Theory, and International Law" (2002). 26 *McGill Law Journal* 849.
5. MacKinnon, Catherine. *Toward a Feminist Theory of State*. Harvard University Press, 1989.
6. Atrey and Shreya. *Intersectional discrimination*. Oxford University Press, 2019.
7. Prabha Kotiswaran, "Rape Law and Reform in India" (2014), 14 *S. Asian Rev. L. & Soc. Sci.* 3.
8. Jyoti Belur et al., "Challenges of Policing Violence Against Women in India" (2015) 55(4) *British Journal of Criminology* 563.