The Indian Journal for Research in Law and Management

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ARE INDIAN LAWS GENDER-NEUTRAL? WHY WE NEED LAWS THAT PROTECT EVERYONE

K.Manasa

INTRODUCTION

Indian laws promote equality. But when it comes to reality it is not.We have many laws that are gender biased. Which does not allow equality and shows favorism towards specific gender. So it could be the time to bring gender neutral laws, which applies to all people without any favorism.

WHY THERE ARE GENDER SPECIFIC LAWS

Indian constitution are specific towards protecting women and children because they wear considered as the vulnerable groups as they faced discrimination over centuries in a patriarchal society.

They were inserted because the framers knew formal equality is not enough when there is historical.

WHERE INDIAN LAWS ARE GENDER-NEUTRAL

Post 2010, many laws were made neutral:

- POCSO Act, 2012: Protects all children <18 from sexual offences, whether boy, girl or transgender.
- Transgender Persons (Protection of Rights) Act, 2019
- Bharatiya Nyaya Sanhita, 2023 – Section 2(10): Defines ‘person’ to include transgender, a step towards neutrality.
- Labour Codes, Equal Remuneration Act, 1976: Equal pay for equal

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WHERE INDIAN LAWS ARE STILL NOT GENDER-NEUTRAL

Indian laws were made to protect women at a time when they needed it the most. But because of that, many of our criminal and civil laws still see victim and accused only through the lens of gender. Even after BNS came in, this distinction continues, especially in cases of sexual offences, domestic violence, and cruelty in marriage.

1. Sexual Offences
    - Rape – Sec 63 BNS: The law still says only a man can commit rape and only a woman can be its victim. If a man or a transgender person faces the same kind of sexual assault, it is not called rape under this section. It is tried under other sections which carry a lesser punishment.
    - Harassment and Stalking – Sec 74, 75, 76 BNS: These laws were made to protect a woman's modesty, dignity and safety from harassment and stalking. If a man goes through the exact same harassment, there is no equal provision for him to complain under these sections.
2. Domestic Violence and Cruelty
    - Domestic Violence Act, 2005: As the name itself says, only a woman can go to court as an "aggrieved person" under this Act. A husband who is abused in the same house cannot seek protection under it.
    - Cruelty in Marriage – Sec 85 & 86 BNS: This law punishes cruelty by a husband or his family against a wife. But a husband facing cruelty from his wife cannot file a case under this same section.
    - Maintenance- Sec 144 BNSS: On paper, maintenance law sounds neutral, but in practice it is linked with laws like Sec 85 BNS. So in most cases, it ends up being a support system mainly for women.

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-POSH Act, 2013: At workplace too, only a woman can file a sexual harassment complaint under POSH. A male colleague or a transgender colleague facing the same harassment has no remedy under this Act.

WHY WE NEED LAWS THAT PROTECT EVERYONE – THE DATA GAP

1. Male Victimization is Real but Unreported:

NCRB does not have separate data for male rape victims. Studies by Centre for Civil Society point to male victims of domestic violence and sexual assault not reporting due to stigma and lack of legal remedy.

2. Misuse and Due Process:

In Arnesh Kumar v. State of Bihar (2014) and Rajesh Sharma v. State of UP (2017), Supreme Court itself noted misuse of 498A and laid down arrest guidelines. Gender-neutral procedural safeguards help both sides.

3. LGBTQ+ and Transgender Protection:

After NALSA v. UOI (2014) and Navtej Singh Johar (2018), constitutional morality demands neutrality. A transgender person assaulted cannot file rape under Sec 63 BNS.

4. Principle of Equality:

Under Article 14 and 21, protection should be based on vulnerability, not gender identity. Justice Verma Committee (2013) recommended making some sexual assault laws gender-neutral in terms of victim, though Parliament did not fully adopt it.

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Here is a humanised, balanced conclusion you can use directly in your paper / speech:

CLOSING NOTE: JUSTICE SHOULD HAVE NO GENDER

Laws were never meant to pick sides. They were meant to protect people.

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India needed gender-specific laws because for a very long time, women suffered in silence — inside their own homes, at workplaces, on the streets. No one listened to them. Laws like Section 498A, the Domestic Violence Act and POSH finally gave them a voice when society refused to. That protection was necessary then, and it is still necessary today. It must stay, with full strength.

But times have changed, and so has our understanding of pain.

Today we know that pain does not have a gender.

If a man is beaten by his partner, he has nowhere to go, because the DV Act only sees him as an abuser, never as a victim. If a boy is sexually assaulted, the law does not even call it rape, because it says only a woman can be raped. If a transgender person is harassed at work, POSH does not cover them.

Their trauma is real. Their suffering is real. But our law has no place to write it down.

And then there is another harsh reality — when a law is one-sided, it can be misused. Just like we have seen false cases under SC/ST Act in some instances, we are now seeing false cases under 498A and rape laws. The Supreme Court itself in *Arnesh Kumar vs State of Bihar* said

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that arrest should not become a weapon. A false case ruins not just a man, but his entire family and future. It also hurts real women victims, as their genuine cases lose trust.

Gender-neutral does not mean anti-women, it means pro-fairness.It means being pro-justice.

Gender-neutral laws mean:

If a woman is assaulted, she gets justice.

If a man is assaulted, he also gets justice.

If a transgender person is assaulted, they should also get justice.

Same crime, same punishment — no matter who does it or who suffers it.

We don't need laws that label men as oppressors and women as victims. We need laws that see every person as human first .Laws that protect without bias, punish without bias, and listen without bias.

Because the goal of law is not to empower one gender over another. The goal is to create a society where everyone feels safe and protected.

That is why India now needs gender-neutral laws — not to take away anything from women, but to give protection to everyone else who was left out.

Justice for women. Justice for men. Justice for all.

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