

Gender Justice and Gender-Biased Laws in India: A Comparative Socio-Legal Analysis WITH The USA and UK

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Abstract: Gender justice represents a fundamental component of constitutional democracy, human dignity, equality, and the rule of law. Although the concept originally developed largely in response to the historical discrimination, violence, economic dependence, and social marginalisation experienced by women, contemporary gender justice has acquired a broader meaning. It now requires legal systems not only to protect women against structural inequality but also to examine whether laws themselves reinforce gender stereotypes, exclude particular categories of victims, or impose unequal legal consequences merely on the basis of sex or gender. India has enacted an extensive framework of women-protective legislation relating to domestic violence, dowry, cruelty, sexual harassment, rape, maintenance, and matrimonial rights. These measures emerged from genuine social conditions in which women were disproportionately exposed to violence and discrimination. Nevertheless, changing family structures, recognition of male and LGBTQ+ victimisation, constitutional jurisprudence on autonomy and dignity, and comparative developments in foreign jurisdictions have intensified the debate regarding the continued justification of exclusively gender-specific laws.

The Bharatiya Nyaya Sanhita, 2023, which came into force on 1 July 2024, continues several genders-specific features of the earlier Indian Penal Code. Chapter V specifically addresses offences against women and children; rape under Section 63 is framed around a male perpetrator and female victim, while Sections 74–79 similarly provide certain protections specifically to women. Section 85 continues the earlier Section 498A framework concerning cruelty by a husband or his relatives. At the same time, the law retains the marital rape exception for wives aged eighteen or above. These provisions raise complex questions concerning substantive equality, protective discrimination, gender neutrality, due process, and access to justice.

This article undertakes a socio-legal and comparative examination of gender justice in India with special reference to the United States of America and the United Kingdom. The American and British experiences demonstrate that victim-sensitive policies can coexist with increasingly gender-neutral statutory formulations. The study argues that gender neutrality should not be understood as the mechanical removal of women-specific protections. Rather, Indian law should move towards a model of **substantive gender justice**, under which legal protection is available according to vulnerability, harm, coercion, and abuse rather than rigid assumptions about the gender of victims or perpetrators. Such reform must simultaneously preserve affirmative measures required to address the continuing structural disadvantages experienced by women.

Keywords: Gender Justice; Gender-Biased Laws; Gender Neutrality; Equality; Women's Rights; Male Victims; Domestic Violence; Sexual Offences; Bharatiya Nyaya Sanhita; Protective Discrimination; USA; UK; Human Rights; Substantive Equality; Socio-Legal Reform.

INTRODUCTION

Gender justice is an evolving legal and social concept concerned with equality of status, opportunity, dignity, autonomy, security, and access to remedies without unjust discrimination on the basis of sex or gender. It is broader than the idea of identical treatment. A legal system committed to gender justice must recognise that individuals do not always enter social, economic, matrimonial, or institutional relationships from equal positions. Historical subordination, economic dependency, unequal access to education and employment, cultural stereotyping, and gender-based violence may require the State to adopt special protective measures. At the same time, legislation based on historically accurate assumptions may become problematic if it treats those assumptions as universal and permanently excludes victims who do not fit traditional gender categories.

The Indian Constitution provides a powerful normative foundation for gender justice. Article 14 guarantees equality before law and equal protection of laws. Article 15 prohibits discrimination on specified grounds including sex, while Article 15(3) expressly permits the State to make special provisions for women and children. Article 16 establishes equality of opportunity in public employment, while Article 21, through expansive constitutional interpretation, protects dignity, privacy, bodily autonomy, liberty, and decisional freedom. The Directive Principles further encourage equal livelihood, equal pay and humane conditions of work. These provisions demonstrate that Indian constitutionalism embraces both formal equality and substantive equality.

The distinction is significant. Formal equality asks whether similarly situated persons are treated alike. Substantive equality asks whether apparently neutral treatment actually perpetuates disadvantage and whether differential treatment is necessary to remedy historical inequality. Therefore, every women-specific law cannot automatically be described as discriminatory. Legislation concerning maternity, trafficking, dowry violence or gender-based sexual exploitation may legitimately respond to particular social realities. Conversely, the constitutional legitimacy of a protective law should not prevent periodic examination of whether its definitions unnecessarily exclude other victims.

India's contemporary criminal law illustrates this tension. The Bharatiya Nyaya Sanhita, 2023 (BNS), effective from 1 July 2024, places offences against women and children prominently in Chapter V. Sections dealing with rape, sexual harassment, stalking, voyeurism, assault

intending to outrage modesty, dowry death and cruelty continue to reflect women-centred protection. Such an approach is supported by the continuing prevalence of violence against women. Government health statistics drawing upon NFHS-5 indicate that approximately 29 per cent of ever-married Indian women aged 18–49 reported having experienced physical or sexual violence by a husband. The social justification for strong protection therefore remains substantial.

Nevertheless, gender justice cannot be measured exclusively by the protection of one gender. Men can also experience domestic abuse, sexual coercion, stalking, psychological violence, economic abuse, and workplace harassment. Transgender and gender-diverse persons may face particularly serious violence and discrimination while falling outside traditionally binary statutory formulations. The Supreme Court of India has itself progressively rejected rigid gender stereotypes. *National Legal Services Authority v. Union of India* recognised transgender identity and constitutional protection beyond binary gender classifications, while *Navtej Singh Johar v. Union of India* emphasised dignity, privacy and constitutional morality.

The controversy over "gender-biased laws" therefore requires careful terminology. The expression should not be used to imply that laws protecting women are inherently illegitimate or that men's and women's experiences of violence are statistically identical. Instead, it refers in this article to provisions whose rights, liabilities, presumptions, victim definitions, remedies or institutional structures are expressly conditioned by gender and whose continuing justification requires constitutional and socio-legal assessment.

The United States and the United Kingdom offer valuable comparative insights. American federal civil-rights law generally protects individuals against sex discrimination without limiting protection to women. Title VII of the Civil Rights Act prohibits discrimination because of sex, and contemporary federal interpretation includes sexual orientation and transgender status within sex discrimination. Although the United States retains a policy framework specifically called the Violence Against Women Act (VAWA), federally funded VAWA programmes are subject to non-discrimination requirements and cannot exclude persons simply on grounds including sex, gender identity or sexual orientation.

Similarly, the United Kingdom increasingly combines an explicit recognition that violence disproportionately affects women with gender-neutral statutory victim definitions. The Domestic Abuse Act 2021 does not restrict domestic-abuse victimhood to women, while

government policy specifically recognises male victims and barriers to their reporting. These comparative models suggest that recognition of gendered patterns of violence need not require the legal invisibility of victims from other genders.

The present study therefore seeks to examine how India can preserve the protective purpose of gender justice while developing a more inclusive legal framework. It adopts a doctrinal, comparative and socio-legal approach, analysing constitutional principles, statutory provisions, judicial decisions, public-policy materials and available empirical evidence from India, the USA and the UK.

HISTORICAL BACKGROUND

The historical development of gender justice cannot be separated from the patriarchal organisation of family, property, labour and political authority that characterised many societies for centuries. Traditional legal systems frequently treated women's legal personality as dependent upon their relationship with fathers, husbands or other male guardians. Rules concerning inheritance, marriage, sexuality and public participation often reflected assumptions regarding women as dependants and men as economic providers. At the same time, the historical experiences of different communities were diverse, and it would be inaccurate to describe all pre-modern institutions through a single model. What is clear, however, is that modern movements for gender equality emerged from struggles against entrenched legal and social inequalities involving education, property ownership, political representation, employment and bodily autonomy.

The colonial period significantly influenced the development of gender-related criminal and family law in India. The Indian Penal Code, 1860 was drafted within Victorian social and moral assumptions. Several offences were explicitly gendered. Rape law contemplated a male offender and female victim; adultery historically treated the husband as having a legally protected interest in his wife's sexual fidelity; and the marital rape exception reflected the common-law idea that marriage produced continuing sexual consent. Personal laws relating to marriage, divorce, succession and guardianship also contained inequalities that became increasingly contested through social-reform movements.

During the nineteenth and early twentieth centuries, reform movements concerning widow remarriage, child marriage, women's education and property rights helped transform public

understanding of gender justice. The women's movement gradually moved beyond welfare-oriented reform towards claims based on legal personhood, political citizenship and equality. Women's participation in India's freedom struggle further strengthened the argument that independent India could not constitutionally maintain women's inferior civil status.

The Constitution of India, which came into force in 1950, marked a decisive normative break. Equality was constitutionally guaranteed through Articles 14, 15 and 16, while Article 15(3) recognised the legitimacy of special provisions for women and children. This constitutional architecture was significant because it did not adopt an exclusively formal conception of equality. The Constitution simultaneously prohibited sex discrimination and allowed affirmative protection in recognition of actual social disadvantage.

International developments followed a similar trajectory. The Universal Declaration of Human Rights, adopted in 1948, proclaimed that all human beings are born free and equal in dignity and rights and prohibited discrimination based on sex. It further recognised equal rights of men and women in marriage and at its dissolution. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, subsequently provided a comprehensive international framework for eliminating discrimination against women in public and private life. As of July 2026, CEDAW had 189 States parties.

Post-independence Indian legislation progressively addressed gender inequalities in marriage, succession, dowry, maternity and employment. However, violence within the private sphere remained inadequately recognised for several decades. The addition of Section 498A to the Indian Penal Code in 1983 represented an important attempt to address cruelty by husbands and their relatives, particularly in connection with dowry demands. The provision reflected the recognition that domestic violence was not simply a private marital dispute but could constitute serious criminal misconduct.

The 1990s witnessed another significant phase in gender jurisprudence. In *Vishaka v. State of Rajasthan* (1997), the Supreme Court treated workplace sexual harassment as a violation of women's fundamental rights and formulated guidelines in the absence of specific legislation. The judgment demonstrated how constitutional equality, dignity and international women's-rights norms could be used to address institutional discrimination.

Parallel developments occurred in the United States and United Kingdom. In the United States, Title VII of the Civil Rights Act of 1964 prohibited employment discrimination because of sex alongside other protected grounds. The Pregnancy Discrimination Act of 1978 subsequently clarified protection against pregnancy discrimination. The Violence Against Women Act of 1994 represented a major federal response to domestic violence, sexual assault and stalking, although its subsequent development increasingly incorporated non-discrimination and inclusive victim-service principles.

British law also underwent substantial reform. One major historical change occurred through *R v. R* in 1991, when the marital exemption from rape was rejected in English law. This transformation was particularly important because the marital rape exemption had historically emerged from English common-law thought and had influenced colonial legal systems. The Sexual Offences Act 2003 later restructured sexual offences around consent. Although the statutory offence of rape remains anatomically defined in relation to penile penetration, the victim is described as "another person," allowing victims of any sex to fall within the offence. Other offences such as assault by penetration and sexual assault are framed around persons rather than women.

India's legislative response to violence against women expanded substantially during the early twenty-first century. The Protection of Women from Domestic Violence Act, 2005 recognised physical, sexual, verbal, emotional and economic abuse and created civil protective remedies including residence, protection and monetary orders. The Protection of Children from Sexual Offences Act, 2012 was significant because it adopted a child-centred rather than female-child-only framework, thereby illustrating that Indian law can create gender-inclusive sexual protection where the legislature considers it appropriate.

The brutal Delhi gang-rape case of December 2012 generated widespread public mobilisation and led to major criminal-law reforms in 2013. The law expanded definitions of sexual violence, strengthened punishment and introduced offences including stalking and voyeurism. In the same year, Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, institutionalising the principles that had developed after *Vishaka*. The Act expressly protects women and creates Internal Committees and Local Committees for redressal.

Constitutional jurisprudence meanwhile began moving from paternalistic protection towards autonomy and anti-stereotyping. *NALSA v. Union of India* (2014) recognised transgender persons' constitutional rights. In *Independent Thought v. Union of India* (2017), the Supreme Court removed the marital rape exception insofar as it applied to wives below eighteen years. Later decisions such as *Navtej Singh Johar* and *Joseph Shine* in 2018 rejected laws and social assumptions that denied individual autonomy, dignity and sexual agency. In *Joseph Shine*, the Court invalidated the adultery offence and criticised the historical treatment of women as the property or sexual possession of husbands.

The Bharatiya Nyaya Sanhita, 2023 replaced the Indian Penal Code from 1 July 2024 but retained much of the earlier gender structure of sexual and matrimonial offences. Thus, the historical journey of gender justice in India reveals a transition from paternalism to protection, from protection to equality, and increasingly from binary equality toward dignity, autonomy and inclusiveness. The present challenge is to determine how the next generation of reform can reconcile continuing gender inequality with a constitutional commitment to justice for every victim.

Conceptual Framework: Gender Justice, Gender Neutrality and Protective Discrimination

Gender justice should not be equated with gender blindness. A law can be textually neutral yet socially unequal in effect, just as a gender-specific law can sometimes be justified by disproportionate vulnerability. The proper constitutional inquiry therefore concerns purpose, necessity, proportionality, empirical justification and the availability of less exclusionary alternatives.

Three models may be identified. The first is the **protective model**, under which legislation identifies a historically disadvantaged gender, primarily women, and creates specialised remedies. India's Domestic Violence Act and POSH Act substantially follow this model. The second is the **formal gender-neutral model**, under which victim and perpetrator definitions do not depend on sex. The third is a **substantive gender-neutral model**, which provides equal legal eligibility to all victims while permitting specialised services, evidentiary practices and resource allocation for groups shown to experience greater vulnerability.

The third model offers the most promising framework. It recognises that women continue to experience disproportionate forms of domestic, sexual and economic violence while rejecting the assumption that victimhood is biologically exclusive. The United States provides an instructive example: VAWA-funded programmes operate under non-discrimination requirements, yet sex-specific programming may still be used where necessary to the essential operation of a service, provided comparable services exist for others. This illustrates that inclusive legal entitlement and targeted protective services are not contradictory.

Gender Justice under the Indian Constitutional Framework

Article 14 is the principal constitutional source of equality. It prohibits arbitrary State action and requires reasonable justification for classification. Article 15(1) specifically prohibits discrimination on grounds including sex, while Article 15(3) authorises special provisions for women and children. These provisions must be interpreted together. Article 15(3) permits remedial measures but should not become a constitutional justification for perpetuating stereotypical assumptions that women are always victims and men always aggressors.

Indian constitutional jurisprudence has increasingly developed an anti-stereotyping principle. In *Anuj Garg v. Hotel Association of India* (2008), the Supreme Court rejected paternalistic restrictions on women's employment based on assumptions concerning female vulnerability. The decision represents a shift from protection imposed upon women toward enabling women to exercise choice.

Joseph Shine v. Union of India strengthened this transformation. The adultery provision was invalidated because it reflected patriarchal conceptions of marriage and treated women in an unequal manner. The Court's reasoning emphasised dignity, sexual autonomy and equal citizenship.

Similarly, *Navtej Singh Johar* rejected criminalisation rooted in majoritarian morality and affirmed the constitutional relevance of individual identity and intimate choice. When these judgments are read with *NALSA*, a broader constitutional principle emerges: gender justice must protect individuals against both social domination and State-imposed stereotypes.

Women-Specific Protective Laws in India: Necessity and Limitations

Women-specific laws developed because violence against women was historically under-recognised rather than over-regulated. Domestic violence was frequently treated as a private family matter. Sexual harassment was trivialised as interpersonal misconduct. Dowry-related cruelty often remained hidden within households. Special legislation therefore served both symbolic and practical purposes: it identified structural harms, created accessible remedies and imposed institutional obligations.

The Protection of Women from Domestic Violence Act, 2005 is an important example. It protects women experiencing violence within domestic relationships and recognises physical, sexual, verbal, emotional and economic abuse. It provides protection orders, residence orders, monetary relief, custody orders and compensation. The Supreme Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora* struck down the restriction that had limited a "respondent" to an adult male, thereby allowing proceedings against female respondents as well. Yet the statutory beneficiary or "aggrieved person" remains a woman. Consequently, a man experiencing comparable abuse does not obtain the same specialised remedy under this Act.

The question is not whether women require domestic-violence protection; clearly they do. Rather, it is whether providing remedies to other victims would reduce women's protection. Comparative experience suggests that the answer need not be affirmative. A gender-inclusive domestic-abuse statute could preserve dedicated shelters, specialised services and priority resources for women while extending protection orders and emergency remedies to every genuine victim.

The POSH Act, 2013 raises similar issues. It was enacted to protect women against workplace sexual harassment and remains vital to women's workplace equality. The legislation requires employers to establish institutional complaint mechanisms and also provides consequences for malicious complaints, while clarifying that inability to substantiate a complaint by itself should not automatically attract punishment. However, a male or gender-diverse employee subjected to comparable workplace sexual harassment cannot invoke the legislation as an "aggrieved woman." Such persons must depend on general employment rules, organisational policies or other legal remedies that may not provide an equivalent specialised process.

A future reform model could therefore retain the existing institutional machinery while expanding victim eligibility. The historical origins of a law need not permanently determine the gender of every future beneficiary.

Gender-Specific Criminal Law under the Bharatiya Nyaya Sanhita, 2023

The BNS represents the most significant restructuring of India's general criminal code since independence, yet its treatment of several gender issues demonstrates continuity with the IPC. Chapter V is expressly titled "Of Offences Against Woman and Child." Sections 63–71 address sexual offences, while Sections 74–79 deal with various forms of criminal force, sexual harassment, disrobing, voyeurism, stalking and insults to the modesty of women.

Section 63 defines rape through conduct by a man against a woman. This preserves a gendered perpetrator-victim structure. Adult male and many transgender victims of non-consensual penetrative sexual acts may therefore not receive equivalent recognition under the statutory offence of rape. In contrast, the Protection of Children from Sexual Offences Act protects children irrespective of sex, showing that gender-neutral victim definitions are not foreign to Indian criminal jurisprudence.

At the same time, the gendered nature of Indian rape law reflects the extreme prevalence and social context of sexual violence against women. Therefore, reform should not be based on an assumption of numerical symmetry. The more persuasive argument is that recognising additional categories of victims does not require denial of the particular forms of sexual violence that women experience.

Another significant issue is marital rape. Exception 2 to Section 63 of the BNS states that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years, do not constitute rape. Yet Section 67 separately criminalises non-consensual sexual intercourse by a husband with his wife when she is living separately. The distinction raises a difficult constitutional question: why should the legal protection of sexual autonomy depend upon whether spouses are cohabiting?

The marital rape debate demonstrates that gender justice cannot be confined to debates about male victims or alleged misuse of laws. A law may simultaneously be gender-specific and insufficiently protective of women. The marital rape exception protects husbands from the ordinary rape provision while denying married women the same protection from non-

consensual intercourse that unmarried women possess. Thus, gender bias can operate both against and in favour of women depending upon the particular legal issue.

Cruelty, Dowry Laws and Procedural Fairness

The earlier Section 498A IPC criminalised cruelty by a husband or his relatives against a married woman. Its substantive framework is continued through Sections 85 and 86 of the BNS. Section 85 provides punishment for a husband or relative of a husband who subjects a woman to cruelty, while Section 86 defines cruelty to include serious wilful conduct and harassment connected with unlawful demands for property or valuable security.

This legal protection arose from a serious social problem involving dowry harassment, matrimonial cruelty and dowry deaths. Its necessity cannot fairly be assessed without recognising that context. At the same time, concerns regarding indiscriminate arrests and the implication of extended family members have appeared repeatedly before courts.

In *Arnesh Kumar v. State of Bihar* (2014), the Supreme Court directed police not to make automatic arrests merely because an accusation under Section 498A had been registered. The Court emphasised statutory safeguards governing arrest and required consideration of necessity. This decision is significant because it offers a model for reconciling victim protection and accused-person rights. The appropriate response to possible misuse is not necessarily repeal of substantive protection; it may instead involve better investigation, reasoned arrest, judicial scrutiny, accountability for knowingly false allegations and timely adjudication.

Due process is itself a component of gender justice. A gender-sensitive legal system must take allegations seriously without treating accusation as proof. Equally, concerns about false complaints should not become a rhetorical device for discrediting genuine victims. The criminal-justice system must operate through evidence, proportionality and procedural fairness rather than gender stereotypes about either complainants or accused persons.

Male Victims and the Problem of Legal Invisibility

Recognition of male victimisation remains one of the most contested areas in debates over gender-neutral law. Masculine stereotypes can themselves prevent disclosure. Men may fear

ridicule, disbelief, social stigma or assumptions that physical strength makes victimisation impossible.

Comparative public-health evidence confirms that intimate partner violence is not exclusively experienced by women. United States CDC data have reported that approximately 41 per cent of women and 26 per cent of men experienced contact sexual violence, physical violence or stalking by an intimate partner during their lifetime and reported a related impact. The figures are not equivalent and demonstrate the greater prevalence among women, but they also demonstrate that male victimhood is significant rather than theoretically negligible.

The British Government has similarly acknowledged that male victims may face shame, stigma, disbelief and stereotypes associated with masculinity. Its 2022 Supporting Male Victims statement makes clear that violence-against-women-and-girls' policies should not negate the experiences of men and boys.

India lacks an equivalent comprehensive framework specifically examining barriers experienced by male victims of domestic and sexual violence. Research is needed before legislative design, but the absence of data should not itself justify legal invisibility. National surveys should collect comparable data concerning victimisation across genders.

Transgender Persons, Non-Binary Identity and Gender Justice

The binary structure of many gender laws becomes more difficult to justify after *NALSA*. The Supreme Court recognised gender identity as integral to dignity and autonomy and directed measures for the protection and advancement of transgender persons.

Yet criminal and civil statutes do not always reflect this constitutional development. A transgender person may experience domestic violence, sexual assault, stalking or workplace harassment in circumstances substantially similar to those covered by women-specific laws while facing uncertainty regarding statutory protection.

A modern gender-justice framework must therefore move from a simple male-versus-female debate toward an individual-centred conception of dignity and vulnerability. The question should be whether an individual has been subjected to prohibited conduct, not whether the individual fits a historically predetermined victim category.

Comparative Perspective: United States of America

The United States provides a useful but not directly transferable model because criminal law is substantially governed by individual states, while federal law plays major roles in civil rights, interstate offences, funding and constitutional review.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination because of sex. Its protection is not restricted to women. The U.S. Equal Employment Opportunity Commission states that everyone, regardless of gender, is protected against sex discrimination under Title VII.

The development of American law also demonstrates the expansion of "sex discrimination" beyond traditional male-female classifications. In *Bostock v. Clayton County* (2020), the U.S. Supreme Court held that an employer who dismisses an individual merely for being gay or transgender violates Title VII's prohibition of discrimination because of sex. The judgment represents an important example of how statutory equality language can evolve to address changing understandings of identity.

The Violence Against Women Act presents an especially useful comparison with India. Its title and historical purpose acknowledge violence against women, yet its contemporary funding structure prohibits discrimination in VAWA-funded programmes on grounds including sex, gender identity and sexual orientation. The U.S. Department of Justice expressly states that domestic violence can happen to anyone regardless of sex, sexual orientation or gender identity.

This does not mean American law ignores the disproportionate victimisation of women. Instead, it separates the epidemiological recognition of gendered violence from the legal exclusion of other victims. Such an approach could inform Indian reform.

The American experience also demonstrates the importance of preventing institutional gender bias. U.S. Department of Justice guidance seeks to prevent gender bias from affecting police responses to sexual assault and domestic violence. This principle applies in both directions: authorities should neither dismiss women's allegations because of sexist assumptions nor refuse to recognise male or LGBTQ+ victims because they do not correspond with conventional images of victimhood.

Comparative Perspective: United Kingdom

The United Kingdom provides an even more direct comparison because India inherited significant aspects of its common-law and colonial legal traditions from Britain.

One of the most historically important developments was the rejection of marital immunity from rape in *R v. R* in 1991. The decision helped dismantle the assumption that marriage constitutes irrevocable sexual consent. India's continued marital rape exception therefore creates an important divergence from modern British criminal law.

The Sexual Offences Act 2003 places consent at the centre of sexual-offence liability. Section 1 defines rape using penile penetration by the perpetrator but refers to the victim as another "person," rather than limiting the victim to a woman. Section 2, assault by penetration, and Section 3, sexual assault, are also formulated using person-based terminology. British law is therefore not completely anatomically neutral in the definition of rape, but victim protection is considerably broader than a female-only statutory conception.

The Domestic Abuse Act 2021 represents another significant development. Its definition is based upon abusive behaviour between personally connected individuals, rather than on a female victim and male perpetrator. It encompasses physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour and economic abuse.

At the same time, British policy explicitly recognises that domestic abuse is gendered in its prevalence and impact. Government guidance acknowledges that women are disproportionately affected while emphasising that men can also be victims. This combination offers an important socio-legal model: **gender-neutral legal protection with gender-responsive policy implementation.**

The Equality Act 2010 also provides broad protection against discrimination through protected characteristics including sex, pregnancy and maternity, sexual orientation and gender reassignment. The overall approach is therefore increasingly based on individual protection from discrimination rather than assuming that only one gender can experience unequal treatment.

International Perspectives

International human-rights law historically concentrated strongly on women's rights because ordinary equality guarantees had failed to overcome entrenched discrimination. CEDAW therefore remains indispensable. It requires States to address discrimination against women in political, social, economic, cultural, civil and family life.

The CEDAW Committee's General Recommendation No. 35 treats gender-based violence against women as a serious human-rights concern and emphasises State responsibility to prevent and respond effectively to such violence. Consequently, reform toward gender neutrality cannot legitimately become an excuse for reducing women's access to shelters, compensation, reproductive autonomy, institutional mechanisms or protection against gender-based violence.

At the same time, the Universal Declaration of Human Rights is framed around universal human dignity. Its equality guarantee applies to "everyone," while its marriage provision recognises equal rights of men and women. Contemporary human-rights interpretation therefore supports a dual obligation: States must eliminate structural discrimination against women while ensuring that legal systems do not arbitrarily exclude individuals from protection because of their sex, sexual orientation or gender identity.

Comparative experience increasingly demonstrates that these goals can coexist. Gender-responsive policy recognises disproportionate risk. Gender-inclusive law ensures access to justice. The former responds to social reality; the latter prevents rigid legal exclusion.

Comparative Socio-Legal Analysis

The comparison among India, the USA and the UK reveals three major differences.

First, India relies more extensively upon **gender-specific substantive legislation**. Several important statutes expressly identify women as beneficiaries, and many criminal offences are drafted around women as victims. In contrast, the USA and UK more frequently use person-based or sex-neutral formulations, particularly in employment discrimination and domestic violence.

Second, India constitutionally authorises special provisions for women through Article 15(3). This creates strong legal support for affirmative protection. However, the constitutional

permission to protect women does not necessarily require the exclusion of others. A law may constitutionally provide additional facilities to women while making basic remedies accessible to all victims.

Third, comparative systems increasingly distinguish between **law** and **service design**. A domestic-abuse law may be gender-neutral while specialised shelters remain women-focused because empirical evidence demonstrates particular risks faced by women. Similarly, anti-discrimination legislation may protect everyone while permitting targeted affirmative measures when justified.

India could therefore move away from the false choice between women's protection and gender neutrality. A more sophisticated model would preserve substantive protections for women while extending foundational legal remedies to men, transgender persons and other victims.

Recommendations for Legal Reform in India

Indian law should gradually adopt **victim-centred and harm-centred definitions**. Domestic violence, sexual harassment, stalking and comparable misconduct should primarily be defined according to conduct, lack of consent, coercion, abuse of power and resulting harm.

The Protection of Women from Domestic Violence Act could either be supplemented by a gender-inclusive domestic-abuse framework or amended to permit any victim to obtain core protection and residence-related remedies. At the same time, specialised schemes for women should continue where empirical evidence demonstrates distinct needs.

The workplace sexual-harassment system should ultimately provide an equivalent statutory remedy to every employee subjected to sexual harassment. This need not dismantle the present institutional expertise developed under the POSH framework.

Sexual-offence law requires particularly careful reform. Expanding victim definitions should not dilute punishment or procedural protection for women. Instead, the law may distinguish conduct according to acts and absence of consent rather than exclusively according to gender.

The marital rape exception under Section 63 BNS deserves reconsideration in light of constitutional principles of bodily autonomy, dignity and equality. Marriage should not extinguish an individual's capacity to refuse sexual activity. Any reform should simultaneously

establish procedural safeguards appropriate to the evidentiary complexity of intimate relationships without creating an immunity unavailable outside marriage.

Police reform is equally important. The lesson of *Arnesh Kumar* is that strong substantive law and responsible procedure must coexist. Arrest should be based upon legal necessity; investigation should be professional; genuine victims should receive immediate protection; and knowingly fabricated complaints should be addressed through ordinary principles of law rather than presumptions against complainants.

National data collection should also become gender-inclusive. Reliable information regarding domestic violence, stalking, workplace harassment and sexual victimisation among women, men and gender-diverse persons is necessary for evidence-based legislation.

Finally, judicial and law-enforcement education should address gender stereotypes in all directions. The stereotype that women frequently fabricate allegations can damage genuine complainants. The stereotype that men cannot be victims can silence abused men. The stereotype that transgender persons fall outside ordinary legal institutions can deny access to justice. Gender justice requires rejection of all three.

CONCLUSION

Gender justice in India has evolved from a framework of protective welfare toward constitutional equality, dignity, autonomy and substantive justice. Women-specific legislation has played an indispensable role in exposing and addressing violence and discrimination that had historically been hidden within families, workplaces and social institutions. The continuing prevalence of violence against women establishes that these protective objectives remain relevant.

Nevertheless, constitutional equality is dynamic. Social transformation, changing family relationships, recognition of male victimisation and constitutional recognition of transgender identity require reconsideration of statutory assumptions that equate womanhood automatically with victimhood and maleness automatically with perpetration.

The comparative experiences of the USA and UK show that legal systems can simultaneously acknowledge the disproportionate impact of violence on women and provide remedies to victims irrespective of gender. American VAWA policy demonstrates that women-focused

legislative history can coexist with non-discriminatory access to services, while the UK's Domestic Abuse Act demonstrates how gender-neutral statutory language can operate alongside gender-responsive violence-against-women policies.

India should therefore avoid both extremes. One extreme would preserve every gender-specific rule without examining exclusion, stereotyping or changing constitutional values. The other would mechanically neutralise all laws without recognising historical and continuing disadvantage experienced by women. Neither approach adequately represents substantive equality.

The preferable model is **inclusive substantive gender justice**. Under this approach, the law protects every person against coercion, violence and discrimination while continuing to provide proportionate affirmative measures to groups facing demonstrated structural disadvantage. Gender neutrality should expand justice rather than redistribute vulnerability. The constitutional objective should not be fewer rights for women but equal recognition of every genuine victim.

FUTURE SCOPE

Future research on gender justice in India should increasingly incorporate empirical rather than purely doctrinal analysis. Large-scale surveys are needed to study the nature, prevalence and reporting patterns of domestic abuse, sexual victimisation, workplace harassment and psychological violence across genders. Comparative empirical research should examine whether gender-neutral statutes in the USA and UK have improved access to justice for male and LGBTQ+ victims without reducing protection for women.

Another important area concerns the operation of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam after their commencement on 1 July 2024. Future studies should analyse judicial interpretation, arrest practices, conviction patterns, evidentiary issues and victim experiences under the new framework.

Research should also examine whether domestic-violence legislation can be redesigned around vulnerability while retaining women-focused services. Pilot models may compare gender-inclusive protection orders, specialised shelters, counselling and legal-aid services.

Artificial intelligence and digital technologies will create another frontier of gender justice. Deepfake pornography, digitally altered intimate images, cyberstalking, algorithmic discrimination, online sexual harassment and technology-facilitated coercive control increasingly challenge conventional gender laws. Future legislation will have to define digital harms in ways that recognise their disproportionate effects on women while protecting victims across gender identities.

The relationship between gender justice and family law also deserves deeper analysis. Maintenance, custody, guardianship, matrimonial property, reproductive rights and caregiving responsibilities should be examined through the principle of substantive equality rather than outdated assumptions concerning male providers and female caregivers.

Finally, future scholarship should develop an Indian model of gender neutrality rather than simply importing foreign approaches. The socio-economic realities of Indian women, including unequal labour-force participation, financial dependence, dowry practices, rural vulnerability and barriers to legal remedies, remain distinctive. Reform must therefore combine India's constitutional commitment to protective discrimination with universal principles of dignity and equal justice.

The future of gender justice lies not in replacing women's rights with gender-neutrality, but in expanding the meaning of equality so that historical disadvantage is remedied, present vulnerability is recognised, and no genuine victim is denied justice solely because of gender.

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