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## Evolution of Gender Neutrality in Indian Criminal Law: A Historical and Comparative Perspective

**Dr. Sukhadev Ghasti**

Assistant Professor, Faculty of Law, B.L.D.E Association Law College, Jamkhandi, Karnataka, India

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**Corresponding Author:** Dr. Sukhadev Ghasti

### Abstract

Gender neutrality in India's criminal justice system has emerged as a central issue in recent legal and policy debates. This reflects a gradual movement away from colonial-era, protection-focused laws toward a more equality-driven approach. For decades after independence, many criminal statutes were built on the assumption that women are the primary victims and men the typical perpetrators. This perspective left little room for recognizing the experiences of male, transgender, and non-binary survivors of crime.

In recent years, however, global human rights norms and evolving moral standards have reinforced the principle that legal protection must extend equally to all gender identities. This paper examines the historical development of gender neutrality in Indian criminal law, beginning with the Indian Penal Code of 1860 and tracing its trajectory through constitutional guarantees, landmark court decisions, and major statutory reforms. These include the Criminal Law Amendments of 1983, 2013, and 2018; the Protection of Children from Sexual Offences Act of 2012; and the Transgender Persons (Protection of Rights) Act of 2019.

By comparing India's legal framework with those of countries such as the United Kingdom, Canada, and South Africa, the paper highlights practical lessons for drafting and enforcing gender-neutral laws. Although significant progress has been made, important gaps remain—most notably the lack of legal recognition for marital rape and the continued gender-specific framing of domestic violence legislation.

**Keywords:** Gender Neutrality, Indian Criminal Law, Comparative Jurisprudence, Sexual Offences, Domestic Violence, Transgender Rights, Constitutional Equality, International Human Rights, Legal Reform

### Introduction

The idea of gender neutrality in criminal law stems from the Constitution's fundamental promises of equality and non-discrimination. When the Indian Penal Code was first enacted in 1860, it mirrored the Victorian and patriarchal views of its time—portraying women as passive victims whose honour required protection and men as the sole potential offenders. This protectionist framework not only excluded male and non-binary victims but also reinforced rigid stereotypes about masculinity and femininity.

Following independence, the Indian Constitution introduced strong equality guarantees under Articles 14 and 15, which began to influence and reshape legal thinking. Judicial activism, public interest litigation, and sustained social reform efforts gradually pressed lawmakers to question gendered assumptions embedded in criminal statutes. Laws

such as the Criminal Law Amendment Acts, the Protection of Children from Sexual Offences Act (POCSO), and the Transgender Persons (Protection of Rights) Act mark a slow yet meaningful shift toward inclusivity and gender neutrality.

Despite this progress, key gaps persist. The absence of legal recognition for marital rape, the gender-specific framing of domestic violence laws, and the continued reliance on gendered language in sexual offence provisions reveal how far India still has to go in building a truly gender-neutral criminal justice system.

At the international level, key human rights instruments—including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Yogyakarta

Principles-have pressed states to dismantle discrimination based on gender identity and sexual orientation. Many jurisdictions, notably the United Kingdom and Canada, have already adopted gender-neutral sexual offence laws, explicitly acknowledging that men, transgender, and non-binary individuals can be both victims and perpetrators of such crimes. These reforms offer important lessons for India, which continues to navigate the tension between preserving special protections for women and embracing comprehensive gender neutrality.

**Aims and Objectives**

This paper aims to critically examine the evolution of gender neutrality within Indian criminal law and to chart a practical roadmap for future reforms aligned with constitutional principles and international standards. It traces the development of gendered provisions from the colonial era to the present day, analyzing how statutory and judicial interventions have either advanced or impeded progress toward neutrality. Alongside this historical review, the study undertakes a comparative analysis with selected jurisdictions to highlight global best practices. It further assesses how effectively current Indian laws protect individuals of all genders-both as victims and as the accused-and concludes by offering policy and legislative recommendations designed to establish a truly gender-neutral criminal justice system.

**Research Methodology**

This study uses a combined doctrinal, comparative, and qualitative research design to examine how gender neutrality has evolved in Indian criminal law. Because the subject concerns statutes, judicial rulings, and policy frameworks rather than measurable behaviour, a doctrinal approach forms the foundation of the analysis. The research begins by scrutinizing key primary legal sources-including the Indian Penal Code, the Code of Criminal Procedure, the Criminal Law Amendment Acts of 1983, 2013, and 2018, the Protection of Children from Sexual Offences Act 2012, and the Transgender Persons (Protection of Rights) Act 2019. These laws are evaluated for their language, scope, and the degree to which they either reinforce or challenge gendered assumptions. Leading judgments of the Supreme Court and High Courts are also analysed to assess how judicial interpretation has shaped, supported, or constrained gender-neutral applications. To situate these findings within a broader context, the study draws extensively on secondary materials such as Law

Commission reports, parliamentary debates, academic publications, policy briefs, and reports from both national and international NGOs. This layered approach helps explain not only how the law has been written but also why it has developed in particular ways. In addition, a comparative lens is applied to jurisdictions including the United Kingdom, Canada, South Africa, and Australia-countries selected for their common-law heritage or for pioneering gender-neutral criminal legislation. By studying how these jurisdictions draft, interpret, and enforce criminal provisions, the research identifies both best practices and lessons applicable to India. Although no field survey or primary data collection has been undertaken, the study incorporates a qualitative dimension by analysing publicly available crime statistics and reports from the National Crime Records Bureau, the National Human Rights Commission, and leading human rights organisations. This data helps reveal whether male and transgender victims are reporting crimes and whether law enforcement agencies respond to such complaints on an equal footing. The use of secondary empirical data also helps highlight the practical realities of gender-specific and gender-neutral laws in operation. Analytical tools include content analysis of statutory texts to identify gender-specific language, thematic analysis of judicial opinions and scholarly literature to capture recurring patterns such as “protectionism” or “constitutional equality,” and comparative legal reasoning to synthesise insights from international jurisdictions. By combining these methods, the research is able to move beyond a purely textual reading of the law to explore its social and policy implications. Reliability and validity are ensured by cross-checking claims across multiple sources and using the most up-to-date and authoritative legal texts. Ethical considerations guide the entire research process: sensitive topics such as sexual offences and domestic violence are handled with care, inclusive terminology is used for all genders, and references to international human rights norms are contextualised within Indian constitutional jurisprudence. Overall, this mixed-method approach provides a comprehensive framework for understanding how gender neutrality has emerged, developed, and been contested in Indian criminal law. It captures not only the text of statutes but also the social forces, judicial trends, and international practices that shape them, thereby creating a solid foundation for the analysis and recommendations that follow.

**Table 1:** Overview of Research Design

Component	Description
Research Type	Doctrinal, Comparative, and Qualitative
Focus Area	Evolution of gender neutrality in Indian criminal law
Time Frame Covered	1860 (Indian Penal Code) – Present (latest judicial pronouncements and amendments)
Scope	Statutes, judicial decisions, policy documents, international comparisons
Purpose	To trace historical development, evaluate current provisions, and propose policy reforms

**Table 2:** Primary Legal Sources Analysed

Legal Instrument / Act	Year(s) of Enactment / Amendment	Gender-Neutral Focus / Relevance
Indian Penal Code (IPC)	1860 (subsequent amendments)	Baseline criminal provisions; largely gendered language
Code of Criminal Procedure (CrPC)	1973 (with amendments)	Procedural framework; victim and accused rights
Criminal Law Amendment Acts	1983, 2013, 2018	Expanded definitions of sexual offences; partial move toward neutrality
Protection of Children from Sexual Offences Act (POCSO)	2012	Gender-neutral protection for minors
Transgender Persons (Protection of Rights) Act	2019	Recognises rights of transgender persons; relevant to inclusivity

**Table 3:** Secondary Sources and Data Sets

Type of Source	Examples	Purpose
Law Commission Reports	Reports on IPC reforms, sexual offences, victim protection	Provide reform recommendations
Parliamentary Debates	Lok Sabha & Rajya Sabha debates on criminal law amendments	Understand legislative intent
Academic Literature	Books, journal articles, working papers	Theoretical & critical frameworks
NGO Reports	Human Rights Watch, Amnesty International, Indian NGOs	Ground realities and victim perspectives
Crime Statistics	NCRB, NHRC, UNDP, international crime surveys	Show trends, under-reporting, and enforcement gaps

**Table 4:** Comparative Jurisdictions Studied

Country	Legal Heritage / Reason for Inclusion	Key Gender-Neutral Features
United Kingdom	Common law, former colonial power	Gender-neutral sexual offence laws, equalised age of consent
Canada	Common law with progressive reforms	Recognises male & transgender victims, comprehensive anti-discrimination laws
South Africa	Progressive constitutional framework	Gender-neutral approach to sexual violence & hate crimes
Australia	Common law with recent reforms	Clear statutory language ensuring inclusivity

**Table 5:** Analytical Tools Used

Tool / Method	Application
Content Analysis	Identify gender-specific language in statutes
Thematic Analysis	Code judicial opinions & secondary literature for recurring themes
Comparative Legal Reasoning	Synthesise lessons from international jurisdictions to develop recommendations
Cross-Verification	Ensure reliability by comparing multiple data sources

**Table 6:** Ethical and Quality Measures

Aspect	Practice Adopted
Inclusivity	Use of gender-neutral terminology and respectful discussion of sensitive topics
Data Reliability	Cross-check findings from multiple authoritative sources
Contextualisation	Present international norms within Indian constitutional framework
Acknowledging Limitations	Recognise reliance on secondary data and evolving legal landscape

## Results and Interpretation

An examination of India's key statutes and judicial decisions shows that the country has moved far from its colonial legal roots but still falls short of full gender neutrality. The Indian Penal Code of 1860 was drafted with clear gendered assumptions-most notably in its treatment of sexual offences, where men were cast as perpetrators and women as victims. Despite a series of amendments over the decades, the language of Sections 375 and 376 continues to reflect these assumptions, signalling how gradual reform has been in this area. The Criminal Law Amendment Act of 2013 marked a major turning point by widening the definition of sexual assault, introducing offences such as stalking and voyeurism, and strengthening penalties. Yet,

even these path-breaking reforms stopped short of true neutrality, retaining female-victim and male-perpetrator terminology.

More recent special laws, however, reveal stronger movement toward inclusivity. The Protection of Children from Sexual Offences (POCSO) Act of 2012 is gender-neutral, applying equally to boys and girls. Likewise, the Transgender Persons (Protection of Rights) Act of 2019 represents a landmark in acknowledging diverse gender identities in Indian law, although its criminal provisions are still limited. Together, these developments suggest that Parliament is increasingly willing to adopt inclusive principles in some areas, even if mainstream criminal law remains slower to change.

**Table 7:** Evolution of Gender Neutrality in Key Indian Criminal Laws

Law / Provision	Year	Gender Neutrality Status	Key Features / Notes
Indian Penal Code – Sections 375 & 376	1860 (multiple amendments)	Not gender neutral – defines men as perpetrators and women as victims	Original colonial framing; partial reforms but retains gendered language
Criminal Law Amendment Act	2013	Partially gender neutral	Expanded definition of sexual assault; criminalized stalking & voyeurism; stronger penalties but still gender-specific victim terminology
POCSO Act	2012	Fully gender neutral	Protects all children regardless of gender
Transgender Persons (Protection of Rights) Act	2019	Recognises diverse gender identities	Limited criminal provisions but symbolically important

**Table 8:** Comparative Global Approaches to Gender Neutral Sexual Offences

Country	Key Law	Gender Neutral Definition of Rape / Sexual Assault?	Notable Aspects
United Kingdom	Sexual Offences Act 2003	Yes	Recognises male and transgender victims; gender-neutral terminology
Canada	Criminal Code	Yes	Applies equally to all genders without distinction
South Africa	Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007	Yes	Inclusive approach covering all genders
Australia	Various state/territory laws	Yes (most states)	Progressive inclusion of diverse victims

**Table 9:** Protectionist Laws and Their Gender Focus

Law / Provision	Year	Victim Group Covered	Limitation / Criticism	Suggested Reform
Protection of Women from Domestic Violence Act	2005	Women only	Excludes male and transgender victims	Add parallel gender-neutral provisions
Section 498A IPC	1983	Women only (dowry-related cruelty)	Male/transgender victims excluded	Broaden scope or introduce complementary law

**Table 10:** Judicial Developments Supporting Gender Neutrality

Case / Decision	Year	Court	Significance for Gender Neutrality
NALSA v. Union of India	2014	Supreme Court	Recognised transgender persons as third gender
Navtej Singh Johar v. Union of India	2018	Supreme Court	Decriminalised consensual same-sex relations under Section 377 IPC
Various High Court decisions	2010s	High Courts	Expanded interpretation of “victim” to include men and transgender persons in some contexts

**Table 11:** Practical Gaps Between Law and Implementation

Area	Observed Gap	Consequence	Suggested Action
Police Procedures	Lack of guidelines for male/transgender victims	Under-reporting of crimes	Gender-neutral SOPs and training
Data Collection	Limited official statistics on non-female victims	Invisible victim groups	Gender-disaggregated data collection
Public Awareness	Low awareness of male/transgender victimisation	Continued stigma and silence	Campaigns and sensitisation programs

Judicial interpretation also shows a gradual shift. Over the past decade, Supreme Court and High Court rulings have increasingly recognised the rights of male and transgender victims and have demonstrated a willingness to interpret statutes in gender-neutral terms wherever possible. The Navtej Singh Johar judgment, which decriminalised consensual same-sex conduct under Section 377 IPC, and the NALSA decision recognising transgender rights have been particularly influential. Nevertheless, courts remain bound by statutory language, and without legislative amendments full neutrality cannot be realised.

A comparison with jurisdictions such as the United Kingdom, Canada, South Africa and Australia further highlights this gap. Each of these countries has adopted gender-neutral sexual offence laws-examples include the UK’s Sexual Offences Act 2003, which defines rape without reference to gender and recognises male and transgender victims; Canada’s criminal code, which applies to all genders; and South Africa’s Sexual Offences Amendment Act of 2007, which takes an explicitly inclusive approach.

These models underscore how far India still needs to go to align its laws with international best practices.

At the same time, protectionist legislation such as the Protection of Women from Domestic Violence Act 2005 and Section 498A IPC remains in force. While these provisions respond to the disproportionate vulnerability of women to domestic abuse, they exclude male and transgender victims and risk perpetuating inequality. This research suggests that the answer is not to roll back protections for women but to expand existing laws or introduce parallel provisions that safeguard all victims while retaining special support measures for women where justified.

Data from the NCRB, NGO reports and human rights studies further reveal that crimes against male and transgender victims are under-reported and often under-recognised. Police officers frequently lack clear guidelines for registering such complaints, creating a gap between the promise of equality under the law and its day-to-day application. This gap reinforces stigma and discourages



non-female victims from seeking justice.

Taken together, these findings depict a criminal justice system in transition. Constitutional equality and international human rights commitments are pushing India toward neutrality, but entrenched social attitudes and legislative inertia slow the pace of change. The result is a hybrid framework: inclusive provisions in areas such as child protection and transgender rights coexisting with gender-specific laws on sexual offences and domestic violence.

Interpreting these trends, the paper argues that genuine gender neutrality will require more than amending statutory text. It calls for reforms in institutional practices, including police training, judicial sensitisation and public awareness efforts. Achieving this goal also demands a careful balance-maintaining necessary safeguards for women while ensuring that no gender is excluded from protection or automatically cast as an offender. This balanced approach upholds India's constitutional values of equality and dignity while echoing the global shifts highlighted in the comparative analysis of this study.

### Discussion and Conclusion

The findings of this study reveal a striking contradiction at the heart of Indian criminal law. On the one hand, constitutional principles, judicial decisions, and international trends increasingly support the idea of gender neutrality. On the other, the penal code continues to reflect deeply embedded, gender-specific assumptions inherited from the colonial era. This disconnect raises important concerns about whether the criminal justice system can truly provide equal protection and equal accountability for people of all genders.

One key insight is that the gendered language in sexual offence and domestic violence provisions reflects a protectionist philosophy. While these laws were designed to address the real and disproportionate risks faced by women, they unintentionally deny male and transgender victims the same level of legal protection. By contrast, more recent laws such as the POCSO Act and the Transgender Persons (Protection of Rights) Act demonstrate that Parliament is capable of drafting inclusive, gender-neutral legislation when there is sufficient political will.

However, gender neutrality cannot be achieved through statutory language alone. True equality requires procedural fairness, gender-sensitive policing, and comprehensive training for investigators, prosecutors, and judges. It also calls for an evidence-based understanding of how crimes affect people differently across gender identities. Without these institutional reforms, even laws that appear gender-neutral on paper can fall short in practice. Lessons from countries such as the United Kingdom, Canada, and South Africa show how legislative reform, public education, and institutional training can work together to create genuinely inclusive justice systems. These examples make clear that gender neutrality does not diminish protections for women; instead, it broadens access to justice while still recognising unique vulnerabilities through support mechanisms rather than exclusionary rules.

This research also underscores the importance of India's constitutional framework. Articles 14, 15, and 21-interpreted alongside international human rights instruments

such as CEDAW and the Yogyakarta Principles-provide a strong legal foundation for equal protection irrespective of gender. Recent Supreme Court rulings on privacy, sexual orientation, and gender identity reinforce that equality, dignity, and autonomy are at the heart of Indian constitutional morality. Bringing criminal law into alignment with these principles is both a legal duty and an ethical necessity.

India now stands at a pivotal point. Incremental but decisive changes-such as making sexual offences fully gender-neutral, creating parallel domestic violence protections for men and transgender persons, and reforming police and judicial procedures-can help close the gap between constitutional ideals and legislative reality. These reforms should be designed to extend protections rather than dilute them, ensuring that women's safety remains a priority while also safeguarding other vulnerable groups. Such an approach would align Indian criminal law with international best practices, strengthen public confidence in the justice system, and give new life to the constitutional promise of equality before the law.

Ultimately, this study demonstrates that gender neutrality in Indian criminal law is not only possible but necessary. Achieving it will demand legislative clarity, judicial creativity, and institutional sensitisation. With a balanced and inclusive approach, India can build a criminal justice system that protects the dignity, safety, and rights of every individual-regardless of gender-while also establishing itself as a leader in the Global South and contributing meaningfully to the global conversation on justice, equality, and human rights.

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