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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **STRIVING FOR JUSTICE: ASSESSING GENDER EQUALITY IN INDIAN LEGAL SYSTEM**

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## **ABSTRACT**

*The article 'Striving for Justice: Assessing Gender Equality in Indian Legal System' provides a comprehensive analysis of the pursuit of gender equality within the Indian legal system, examining the challenges, triumphs, and ongoing efforts to address gender disparities. It begins by contextualizing the journey within India's diverse socio-legal landscape, acknowledging both the progress made since independence and the persistent hurdles that shape the reality of gender justice. The concept of gender equality is explored in depth, highlighting its multifaceted nature and its intersection with societal norms, historical injustices, and legal complexities. It delves into the legal framework surrounding gender equality in India, emphasizing landmark legislations, Supreme Court rulings, and constitutional provisions aimed at recognizing and protecting human rights. However, it also critically evaluates the efficacy of these legal instruments in translating the ideals of gender equality into everyday reality, noting challenges such as societal attitudes, legal complexity, and political resistance. Notable cases and legislative measures are discussed to illustrate both advancements and areas needing improvement. The recognition of transgender rights, decriminalization of homosexuality, and initiatives for gender-neutral legislation represent significant progress, yet issues like the misuse of laws related to domestic violence and dowry highlight the complexities of gender-focused legislation. The article concludes by proposing recommendations to promote gender neutrality and inclusivity in Indian law, including comprehensive legislation, amendments to existing laws, inclusive policymaking, education for gender sensitivity, and mechanisms for transparency and accountability. It underscores the importance of collective action and unwavering advocacy in realizing the vision of gender equality*

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*enshrined in India's Constitution.*

## **PRELUDE: -**

In such a vibrant sphere of India's democracy, the journey for reaching the destination of gender equality within the legal system embodies both profound challenges and significant triumphs. The concept hunts through the heart of these dynamic forces, excavating layer after layer of progress and the persisting hurdles that shape the ground of reality. This examination is not just limited within the complexity about laws on the books; it is a narrative that interwoven with the threads of norms prevailing in the society, injustices witnessed in the history, and the relentless pursuit of equitable treatment.

The legal landscape of this country possessing its colonial legacies and rich indigenous legal traditions, depicts a complex arena for the battle of gender justice. Since days of independence, the nation has witnessed a gradual but determined transformation in its legal framework which highly aimed to follow steps in the eradication of gender disparities. Landmark legislations and Supreme Court rulings have marked milestones in this struggle, reflecting a growing appreciation and legal recognition of human rights. However, the efficacy of these legal instruments in transforming the idea of 'gender equality' into the pulse of everyday life till persists a subject of rigorous debate and scrutiny.

This journey is rooted in a critical understanding of 'sophisticated' nature of gender equality that encompasses a spectrum, ranges from the impoverishment of the grassroots concept of human rights to subtle biases in legal procedure and enforcement. This idea, somehow, contradicts against the basis of India's diverse socio-economic milieu, largely influences and, at times, staged the necessity of 'gender justice'. This journey is also associated with the role of civil society which plays a pivotal force to eradicate the gap between the legal framework and the societal scaffolding that supports it. Thus, the path is multi-faceted having both victories and setbacks having imbued with elasticity and hope of all who continue to fight for the dream of a more equitable legal framework.



## **CONCEPT OF GENDER EQUALITY: -**

There is a famous principle of Legal System in India which is 'Everybody is Equal in the Eyes of Law' and via maintaining this philosophy our Criminal Justice System should perform.

The word "Gender" basically denotes the state of being Male or Female or Third Gender. It is an identity through which we can differentiate between people of different sexual characteristics or qualities.

Previously the term 'Gender' was restricted to only Male and Female individuals but after the historic case of 'National Legal Services Authority vs Union of India', the Supreme Court has given recognition to the members of Transgender Community who are neither male nor female at the time of birth.

The term 'Equality' is enshrined in Articles 14-18 of the Indian Constitution. Article 14 stipulates that the state shall not deny to any person 'equality before the law' or 'equal protection of the laws' within the territory of India. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, while Article 16 mandates equality of opportunity in public employment. Additionally, Article 17 abolishes untouchability, and Article 18 abolishes titles. These provisions collectively ensure the principles of equality and non-discrimination in the Indian legal framework.

In the case of "Ram Krishna Dalmia v. Justice Tendolkar<sup>4</sup>", the Supreme Court held that the state shall not deny any person equality in the eyes of laws and equal protection of laws and there must be a 'reasonable classification' in this regard which must not be arbitrary or unreasonable.

The main motive should be to maintain gender neutrality without any partiality in all spheres as it is not only a basic need but also a fundamental right for all citizens of India. However, the term 'equality' may not be applicable in the same way for every gender. For example, hazardous work that can be performed by men via invoking their physical labour may not be done by women as the physical structures of both genders are different from one another. In the recent case of Union of India and

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<sup>4</sup> AIR 1958 SC 538

Others vs Ex. Lt. Selina John<sup>5</sup>, the Supreme Court held that 'terminating employment because the woman has got married is a clear, coarse case of gender discrimination as such actions undermine human dignity, the right to non-discrimination, and fair treatment.'

However, we must understand that while ensuring equality for a specific gender, we cannot discriminate against others. There are various examples in this regard. Despite being recognized by the Supreme Court; we still hardly see any washrooms or latrines for third gender people in public places. Employment vacancies are often accessible only by male and female genders. In the Criminal Justice System of India, various sections like Section 498A of the Indian Penal Code, 1860, which deals with 'Husband or relative of husband of a woman subjecting her to cruelty', Section 375 of IPC, 1860, which defines 'rape', and Section 69 of Bharatiya Nyay Sanhita, 2023, which addresses 'Physical intercourse by making false promise of marriage', are mostly favourable for women in case of victimization, and as a result, all these can be misused. Many times, innocent men are prosecuted. Therefore, we can conclude that equality must be implemented in practical reality and should not be restricted only within legal statutes. Only then can the objective of equality be fulfilled.

### **PRACTICAL IMPLEMENTATION: -**

'Gender Equality' means when each gender is getting equal protection and priority in the Eyes of Law without any discrimination or partiality. 'Action speaks louder than words' so in order to understand whether the so-called gender equality has actually been implemented in the practical reality or not, we have to analyse this concept very critically. There are various instances where we can clearly observe the partiality towards a particular gender as previously discussed but despite all these there are various instances too where gender neutrality has been implemented. There are various Judicial Precedents through which we can get a clear-cut idea about this.

In the Case of Navtej Singh Johar and Ors vs Union of India the Secretary Ministry of Law and Justice<sup>6</sup>, the Supreme Court in its landmark judgement de-criminalised all consensual sex among adults including Homosexual intercourse as previously Homosexuality was considered as an offense and taboo as only Heterosexuality was considered to be normal.

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<sup>5</sup> Civil Appeal No. 1990/2019

<sup>6</sup> AIR 2018 SC 4321

In K. Srinivas vs K. Sunita<sup>7</sup>, the Supreme Court contended that if a false complaint has been filed by the wife against the husband or his family members then that will constitute mental cruelty for the purpose of Sec - 13(1) (ia) of The Hindu Marriage Act 1955.

In the Case of “Secretary, Ministry of Defence vs Babita Puniya<sup>8</sup>, the Apex Court granted permanent commission to the women’s in the Indian Army who are inducted by way of Short Service Commission which they previously did not enjoy as previously it was only applicable for male officers.

In the Case of Lata Singh vs State of Uttar Pradesh and Another<sup>9</sup>, the Supreme Court held that right to Marriage is a Fundamental Right and also held that inter-caste marriages can be a good way to remove the negativity of caste system in India.

Other than all these there are various Laws and Policies which has been implemented for the reason of protecting the gender which are mostly vulnerable towards a specific crime. These are also known as ‘Protective Discrimination’ as they are biased towards a specific gender; for instance- Protection of Women from Domestic Violence Act, 2005, the Maternity Benefits Act, 1961, Dowry Prohibition Act, 1961, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 etc.

There are many more initiatives which has been taken by Government like - In June 2021, New Delhi Municipal Council had opened the first toilet for Transgenders in the city of Delhi, The Transgender Persons (Protection of Rights) Act, 2019 has implemented which criminalises discrimination against Transgender Persons and mandates equal access to public spaces etc. Though the equality has been achieved in some specific aspects but there are still many loopholes which need to be fixed by taking appropriate measures as only through ‘equality’ the proper development of a Country and the true essence of Rule of Law can be achieved.

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<sup>7</sup> (2015) 1 CLR 165

<sup>8</sup> (2020) 7 SCC 469

<sup>9</sup> (2006) 5 SCC 475

## CHALLENGES-

In India, the legal framework extends recognition of gender by classifying individuals as male, female, and third gender. Gender inequality permeates various aspects of society, impacting health, employment, social status, and politics. Discrimination based on gender affects both men and women, influencing issues like career progression and mental health. While laws prioritize the protection of women, there's a rising Men's Rights Movement advocating for gender-neutral legislation. LGBTQ+ individuals face legal and societal hurdles despite some progress in recognizing their rights, such as the acceptance of the third gender and the de-criminalization of Section 377 of IPC by the Supreme Court. Thus, achieving gender equality requires addressing the rights of all genders across India.

In certain instances, the implementation of gender-neutral laws poses challenges within the legal system. Often, there are situations where the criminal justice system tends to perceive males as perpetrators, leading lawmakers to draft provisions that inadvertently target a specific gender. These instances include: -

- **Rape**- The legal definition of rape in India, according to Section 375 of IPC, only considers forced sexual intercourse with a woman against her will or without her consent, effectively excluding male and third-gender victims from legal recognition. This narrow definition fails to encompass other forms of sexual violence experienced by men or third gender individuals, such as anal or oral penetration, limiting their legal protection. Male victims of rape often encounter social stigma, disbelief, and reluctance to report the crime due to societal stereotypes about masculinity and sexual violence. Consequently, existing laws may not adequately address their experiences or provide sufficient protection.

This gender biasness in Section 375 violates constitutional rights, particularly Articles 14 and 21 of the Indian Constitution, which ensure equality before the law and the right to live with dignity. Third gender individuals, in particular, are denied legal protection under this provision. Calls for gender-neutral rape laws have emerged, advocating for a broader definition of rape that includes all forms of non-consensual sexual acts, irrespective of the gender of the victim or perpetrator. Such reforms would address the gaps in the legal framework and ensure equal protection for all genders under the law.



- **Domestic Violence**- The Protection of Women from Domestic Violence Act, 2005, as a protective legislation, has been aimed to protect women from violence within their marriages, primarily perpetrated by husbands or in-laws. Although initially successful in providing justice to many married women, it has been exploited over time for personal gain or vendetta. Gender neutrality dictates that legal protections should not favour any gender. However, the application of the Domestic Violence Act has predominantly benefited women, as they are considered the aggrieved party. Consequently, few innocent men have been falsely accused of domestic violence. To address gender neutrality, measures should be taken to prevent misuse of the law, including implementing strict penalties for filing false cases, providing support services for all victims, and promoting awareness about truthful reporting and fair treatment.
- **Cruelty**- Section 498A of the Indian Penal Code, 1860 was introduced to address cruelty against wives, for instances the cases related to dowry deaths. It aimed to provide legal recourse for married women facing harassment, offering protection from any form of cruelty inflicted by the husband or his relatives. However, over time, it has faced criticism for potential misuse and its one-sided approach, as it primarily offers remedies for wives without similar protections for husbands.

*State of Haryana v. Bhajan Lal*<sup>10</sup> highlighted concerns regarding the misuse of Section 498A. The Supreme Court laid down guidelines to prevent such misuse, emphasizing the importance of distinguishing genuine cases from false or exaggerated ones.

In *Social Action Forum for Manav Adhikar v. Union of India*<sup>11</sup>, the Supreme Court acknowledged the misuse of Section 498-A, noting its use as a weapon for harassment in many instances. The court directed the police to adhere to the guidelines set forth in the Bhajan Lal case to prevent arbitrary arrests and ensure justice.

Addressing gender biasness in laws and policies is crucial for promoting gender equality and ensuring equal rights and opportunities for all individuals, regardless of gender. Efforts to reform outdated laws and promote gender-sensitive legislation are essential steps towards achieving this goal. There are certain challenges in this regard and as follows-

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<sup>10</sup> AIR 1992 SC 604

<sup>11</sup> AIR 2018 SC 4273

- **Societal Attitudes**: Deep-rooted societal attitudes and stereotypes about gender roles and responsibilities can influence lawmakers' perceptions and hinder efforts to enact gender-neutral laws. Resistance from conservative groups or individuals who uphold traditional gender norms may impede legislative progress. Also, limited data on gender-based issues and experiences, especially concerning men and transgender individuals, can pose a challenge for lawmakers in understanding the scope and impact of gender inequality. Without comprehensive data, it may be difficult to justify the need for gender-neutral legislation.
- **Legal Complexity**: Gender-neutral legislation requires careful drafting and consideration of diverse gender identities and experiences. Lawmakers struggle in navigating the legal complexities involved in creating laws that effectively address the needs and rights of all genders while ensuring clarity and enforceability. Even if gender-neutral laws are enacted, challenges may arise in implementing and enforcing them effectively. Law enforcement agencies, judicial systems, and other institutions may lack the resources, training, or capacity to ensure equitable application of the law and protect the rights of all genders.
- **Balancing interests**- Balancing competing interests and concerns from various stakeholders, including women's rights advocates, men's rights activists, LGBTQ+ communities, and religious or cultural groups, presents a significant challenge for lawmakers. Finding consensus and addressing diverse perspectives can be challenging in the legislative process.
- **Political Resistance**: Political opposition or reluctance to address gender-related issues can stall legislative efforts towards gender-neutral laws. Lawmakers may prioritize other political agendas over gender equality, leading to delays or insufficient attention to legislative reforms.

Addressing these challenges requires a concerted effort from policymakers, civil society organizations, legal experts, and other stakeholders to promote gender equality and ensure the rights and dignity of all individuals, regardless of gender identity or expression.

### **RECOMMENDATIONS: -**

In India, while there is no dedicated Gender Neutrality Bill, the Constitution contains provisions promoting equality and non-discrimination, which have been upheld in judicial rulings like the NALSA case recognizing transgender rights. Additionally, legislation like the Transgender Protection Act, 2019 and the Prevention of Sexual Harassment Act, 2013 aim to protect the rights of marginalized genders. Proposed Bills like the Criminal Law Amendment Bill, 2019 and the Bharatiya

Nyaya Sanhita Bill, 2023 which shall be enacted in coming days seek to introduce gender-neutral language in criminal laws, while the proposed Uniform Civil Code aims to address discriminatory provisions in family and succession laws. Despite the absence of specific gender neutrality laws, various legal provisions and proposed reforms strive to promote gender equality and address discrimination in Indian society.

To achieve gender-neutral laws in India, several recommendations can be considered –

- **Comprehensive Legislation:** - Developing a comprehensive Gender Neutrality Bill can be step forward to achieve the gender neutrality and such Bill must explicitly prohibit discrimination based on gender identity and sexual orientation in all aspects of life, including employment, education, healthcare, and housing.
- **Amend Existing Laws:** - Amend existing laws to incorporate gender-neutral language and provisions. This includes revising statutes related to employment, criminal justice, family law, and protection against harassment to ensure they are inclusive of all genders. For instance- the victim and accused must be classified as ‘any person’ or ‘whoever’ and by which the law shall supervise on the perpetrator or victim irrespective of their gender.
- **Policy Making and Civil Society Engagement:** - Ensure that policy-making processes involve representatives from diverse gender identities and communities, collaborating closely with civil society organizations and advocacy groups working on gender issues. By actively engaging with these stakeholders, policymakers can gain valuable insights into the specific needs and concerns of marginalized genders, leading to more comprehensive and inclusive legislation.
- **Education and Training for Gender Sensitivity:** - Integrate gender-neutral education and training modules into academic curricula for law students, legal professionals, and civil servants as well as common people. By fostering a deeper understanding of gender diversity and promoting gender-sensitive practices from an early stage, the legal community can contribute to building a more inclusive legal framework and effectively implementing gender-neutral laws.
- **Transparency, Accountability, and Evaluation:** - Establish transparent mechanisms for monitoring and enforcing compliance with gender-neutral laws, including provisions for reporting and addressing instances of discrimination or bias. Additionally, regularly evaluate the effectiveness of gender-neutral laws and policies, gathering feedback from stakeholders

and being prepared to revise and update them as needed. This approach ensures that gender equality remains a priority and that laws continue to evolve to address emerging gender-related challenges effectively.

### **CRITICAL ANALYSIS: -**

The entire theme discussed provides a comprehensive overview of the journey to achieving the goal of 'gender equality' within the framework of the Indian legal system. The narrative, precisely, pivots around the dichotomy that exists between the legislative advancements and their implications in the everyday scenario, juxtaposed with the backdrop of 'conservative' India's socio-political climate. The manuscript in each step commendably outlines the evolution of legal stance of this country on the idea gender equality by underscoring landmark legislations passed from the Parliament of the nation and also further put forward Supreme Court decisions that have ostensibly propelled the country towards a more inclusive understanding of gender rights, including recognition of transgender individuals as a 'third gender', progressive rulings on gay rights, and amendments aimed at the strengthening safety and upliftment of women rights. Such legal milestones are emblematic of the commitment to rectifying historical injustices and set stage for aligning with international human rights rules and guidelines.

Moreover, the true essence of "Striving for Justice" embedded in its critical exploration of the chasm between legal provisions and their tangible impact on gender equality. Also, the manuscript, tried to enhance the mentioned true essence without going through the complexities of implementing gender-neutral laws within a societal framework that is deeply entrenched in patriarchal norms.

To complement the analysis of the concept of gender equality in the legal framework of this country, in the case *Vishaka vs. State of Rajasthan*<sup>12</sup>, the Supreme Court laid down guidelines known as the "Vishaka Guidelines" to prevent sexual harassment of women at work until legislation was enacted specifically for that purpose. On the other hand, in *Navtej Singh Johar vs. Union of India*<sup>13</sup>, the historic verdict decriminalized consensual homosexual acts among adults by declaring Section 377 of the Indian Penal Code, 1860 as unconstitutional and extended the ambit to penalizes consensual sex

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<sup>12</sup> AIR 1997 SC 3011

<sup>13</sup> AIR 2018 SC 4321



between adults of the same sex. This case stands for a monumental victory for LGBTQ+ rights in India. Although primarily a privacy case, but, the decision of *Justice K.S. Puttaswamy (Retd.) vs. Union of India*<sup>14</sup> laid down the foundation for the true essence of the Constitution of India by recognizing privacy as a fundamental right which also can be interpreted in a sense that includes privacy concerning one's sexual orientation. Importantly, in the case *Mary Roy vs. State of Kerala*,<sup>15</sup> the Indian judiciary gave a significant verdict that allowed Christian women in the State of Kerala to have equal rights to their familial property, which not only breaks the age-old conservative idea but also, challenges the gender disparity embedded within the Travancore and Cochin Christian Succession Acts.

Thus, Indian judiciary always possessed the dynamic nature of the legal struggle for gender equality in India by reflecting the judicial willingness to recognize and to eradicate gender-based injustices for which sufferings of one side cannot be explained through mere words. Also, this research doesn't shy away from addressing the contentious aspects of gender-focused legislation, such as the misuse of laws related to domestic violence and dowry, which in many cases resulted in unintended consequences for men. Thus, recommendation of this research opens up a larger conversation about the needs for laws to be both gender-sensitive and gender-neutral that ensures protection for all individuals irrespective of any gender identity.

### **CONCLUSION: -**

In the tapestry of India's legal landscape, the quest for gender equality unfolds as a nuanced narrative, weaving together legislative milestones, societal norms, and ongoing struggles. The prelude to this examination sets the stage by acknowledging the complexity inherent in this journey, recognizing both the triumphs and the challenges that shape the reality of gender justice in India. At its core, the concept of gender equality transcends mere legal frameworks; it delves into the heart of societal norms and historical injustices. From colonial legacies to indigenous legal traditions, India's legal system reflects a dynamic arena for the battle of gender justice. Over the years, landmark legislations and Supreme Court rulings have marked significant strides towards recognizing human rights and addressing gender disparities. However, the efficacy of these legal instruments in translating the

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<sup>14</sup> AIR 2017 SC 4161

<sup>15</sup> AIR 1986 SC 1011

ideals of gender equality into everyday reality remains a subject of rigorous debate and scrutiny.

The notion of gender equality, as elucidated in Indian law, encompasses a spectrum that ranges from grassroots human rights issues to subtle biases in legal procedures. While constitutional provisions guarantee equality before the law, the practical implementation of gender-neutral principles faces challenges. Societal attitudes, legal complexity, balancing competing interests, and political resistance are among the hurdles that impede progress towards gender equality.

Nevertheless, amidst these challenges, there are notable instances of progress. Landmark judgments such as *Navtej Singh Johar v. Union of India* and *National Legal Services Authority v. Union of India* have expanded the horizons of gender rights, de-criminalizing homosexuality and recognizing transgender individuals' fundamental rights. Additionally, legislative measures such as the Transgender Act, 2019, and proposed bills like the Bharatiya Nyaya Sanhita Bill, 2023, signify ongoing efforts to promote gender neutrality and inclusivity in Indian law.

The road to gender equality demands comprehensive legislation, amendments to existing laws, inclusive policymaking, education for gender sensitivity, and mechanisms for transparency and accountability. By integrating these recommendations into legal frameworks and societal practices, India can move closer to realizing the vision of gender equality enshrined in its Constitution.

In addition to it the journey towards gender equality in the Indian legal system is one of continual evolution and steadfast commitment. It requires not only legal reforms but also a fundamental shift in societal attitudes and norms. Through collective action and unwavering advocacy, India can strive towards a future where all individuals, regardless of gender identity, enjoy equal rights, opportunities, and dignity under the law.