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## Abstract

This article is a critical analysis of the relevance of women-focused protective laws in the contemporary Indian society considering those made under the concept of intersectionality and constitutional justice. It states that gender inequality in India cannot be interpreted only through the lens of gender but women experience is influenced by a combination of caste, class, religion, disability, and region hierarchies. Relying on the theory of intersectionality, the paper shows that structural discrimination is manifested on various levels and requires legal efforts that extend beyond official equality. The constitutional provisions, especially Articles 14, 15, 16, and 21 are examined in the context of demonstrating both the compatibility and compatibility of equality and protective discrimination as principles rather than contradictions.

The paper also assesses how the judiciary has transformed in broadening the rights of women such as the right to workplace safety, reproductive freedom, and family respect. Historical judicial interpretations have enhanced substantive equality which transforms constitutional guarantees into legal protections. Simultaneously, the work interacts with the recent discussions regarding the supposed abuse of the laws that are supposed to empower women like Section 498A IPC. Although the courts have recognized some cases of procedural abuse, the article claims that the cases fail to deny the structural realities of gender-based violence. There is a critical evaluation of increasing discussion on gender-neutral laws. Neutrality fosters inclusivity and acknowledgment of male and transgender victims, but the article warns of sudden changes in favor of the formal equality which can undermine the vital safeguards in a society that remains patriarchal in nature. It finds that the way forward is, not to give the protective discrimination up but to make it more implementation-focused, to enhance procedure protection, and to implement intersection-sensitive reforms. Genuine gender justice is about being fair and protecting but observant to social circumstances.

Keywords: Intersectionality; Gender Justice; Protective Discrimination; Gender-Neutral

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## 1- Introduction

Social inequality has always been a part of human societies, but the way we understand it has changed over time. Earlier explanations focused mainly on economic differences and class divisions. While class remains important, it is no longer sufficient to explain how inequality actually works in everyday life. In contemporary society, disadvantage is rarely shaped by a single factor. Instead, it is produced through the interaction of multiple social forces such as gender, caste, class, religion, disability, and region. The idea of intersectionality, introduced by Kimberlé Crenshaw, helps us understand this complexity by showing how different forms of discrimination overlap and reinforce one another.<sup>1</sup> Rather than treating inequality

<sup>1</sup> Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex' (1989) University of Chicago Legal Forum 139.

as fragmented or isolated, intersectional analysis encourages us to see it as interconnected and context-specific.<sup>2</sup>

This perspective is particularly relevant in the Indian context. The position of women in India has historically been shaped by layered hierarchies. Gender discrimination has often intersected with caste-based exclusion, economic dependency, and regional disparities. Patriarchal norms have restricted women's access to property, education, employment, and decision-making power for generations.<sup>3</sup> These inequalities were not merely social practices but were deeply embedded in institutions and traditions. Recognizing this reality, the framers of the Indian Constitution incorporated both equality guarantees and provisions for special protection. Article 15(3) explicitly allows the State to make special provisions for women and children, acknowledging that formal equality alone may not correct historical injustice.<sup>4</sup>

Over the years, the judiciary has played a crucial role in strengthening this constitutional vision. In *Vishaka v State of Rajasthan*, the Supreme Court recognized sexual harassment at the workplace as a violation of fundamental rights and laid down guidelines to ensure women's safety and dignity.<sup>5</sup> Such decisions illustrate that legal equality must go beyond abstract principles and translate into meaningful protection. Laws addressing domestic violence, dowry harassment, and reproductive autonomy were enacted to respond to real and widespread harm. These measures were not designed to create privilege but to address structural disadvantage.

However, recent years have witnessed growing debate around the alleged misuse of certain women-centric laws. Critics argue that provisions such as Section 498A IPC have occasionally been used as tools in matrimonial disputes. While courts have acknowledged the need for procedural safeguards, they have consistently maintained that instances of misuse cannot overshadow the persistent reality of gender-based violence. Still, the debate has prompted a broader reconsideration of whether the existing framework requires reform.

At the same time, the discourse has gradually shifted toward the idea of gender-neutral laws. Supporters of neutrality argue that legal protection and liability should not depend on gender identity but should apply equally to all individuals. Yet, scholars of situated intersectionality caution that neutrality may ignore the unequal distribution of social power.<sup>6</sup> Laws that appear neutral in theory may produce unequal outcomes in practice if underlying hierarchies remain intact. Intersectional analysis reminds us that equality cannot be understood in isolation from social context.

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<sup>2</sup> Gabriele Winker and Nina Degele, 'Intersectionality as Multi-Level Analysis: Dealing with Social Inequality' (2011) 18(1) *European Journal of Women's Studies* 51

<sup>3</sup> Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990).

<sup>4</sup> The Constitution of India 1950, art 15(3).

<sup>5</sup> *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

<sup>6</sup> Nira Yuval-Davis, 'Situated Intersectionality, Inequality and Bordering Processes' (2014) 58 *Raisons Politiques* 91

study:

- In a society where women's access to education and employment is improving, are gender-specific protective laws still necessary?
- Are claims regarding misuse of women-centric legislation reflective of systemic abuse, or are they amplified narratives that risk delegitimizing genuine victims?
- Would a shift toward gender-neutral laws enhance justice, or could it dilute essential safeguards in a still-patriarchal social structure?
- How can the legal system balance fairness for the accused with effective protection for those historically disadvantaged?

These questions are not merely academic. They go to the heart of how justice is conceptualized in a changing society<sup>7</sup>. Intersectionality provides a framework for examining these tensions by situating legal debates within broader social realities.<sup>8</sup>

This article therefore critically examines whether the current legal framework built upon the principle of protective discrimination continues to serve its intended purpose in contemporary India or whether reform toward a more balanced and inclusive model of justice is necessary. By exploring the intersection of social inequality, constitutional guarantees, and evolving debates on misuse and neutrality, the study seeks to contribute to a nuanced understanding of gender justice in the present era.

## 2- Understanding Intersectionality and Social Inequality

### 2.1 Meaning and Origin of Intersectionality

The concept of intersectionality emerged as a powerful framework to understand how different forms of inequality overlap and interact in society. The term was first articulated by Kimberlé Crenshaw to explain how Black women's experiences could not be understood by looking at race or gender separately.<sup>9</sup> Over time, scholars expanded the idea to show that social divisions such as caste, class, gender, race, sexuality, and disability do not function independently; rather, they operate together and shape one another.

Intersectionality, therefore, is not simply about adding categories of disadvantage. Instead, it highlights how multiple identities coexist within an individual and create layered forms of discrimination.<sup>10</sup> For example, a woman may face gender discrimination, but if she also belongs to a marginalized caste or an

<sup>7</sup> Gabriele Winker and Nina Degele, 'Intersectionality as Multi-Level Analysis: Dealing with Social Inequality' (2011) 18(1) *European Journal of Women's Studies* 51

<sup>8</sup> Nira Yuval-Davis, 'Situated Intersectionality, Inequality and Bordering Processes' (2014) 58 *Raisons Politiques* 91

<sup>9</sup> Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex' (1989) *University of Chicago Legal Forum* 139.

<sup>10</sup> Gabriele Winker and Nina Degele, 'Intersectionality as Multi-Level Analysis: Dealing with Social Inequality' (2011) 18(1) *European Journal of Women's Studies* 51

economically weaker class, the discrimination she experiences becomes more complex.<sup>11</sup> This layered discrimination is embedded in social structures, cultural norms, and institutional practices. Intersectionality allows us to examine inequality at different levels social structures, identity formation, and symbolic representation so that we can better understand how power operates in everyday life.<sup>12</sup>

## 2.2 Intersectionality and Women

Women's experiences of inequality are far from uniform. Intersectionality shows that women are differently positioned in society based on caste, class, geography, and ability. For instance, rural women often face limited access to education, healthcare, and employment compared to urban women. The rural urban divide reflects how economic and infrastructural inequalities intersect with gender.

Similarly, Dalit women experience discrimination not only as women but also as members of historically oppressed castes. Their vulnerability is intensified by caste-based exclusion and economic deprivation, placing them at a greater disadvantage than upper-caste women.<sup>13</sup> While upper-caste women may face patriarchal control, Dalit women often confront both caste violence and gender violence simultaneously.

Economic dependency further deepens inequality. Women who lack financial autonomy are more likely to experience restricted mobility, limited decision-making power, and vulnerability within the household.<sup>14</sup> In many cases, employment opportunities for women are shaped by their class background and educational access, reinforcing cycles of dependence.

Disabled women represent another group whose marginalization is often overlooked. Disability intersects with gender to create social exclusion, stigma, and barriers to education and employment. They may also face greater risks of neglect and abuse.<sup>15</sup> Intersectionality thus makes visible those women who remain invisible within mainstream feminist narratives.

## 2.3 Structural Inequality in Society

Structural inequality refers to the systematic ways in which institutions and social norms reproduce power imbalances. Patriarchy remains one of the most enduring structures shaping women's lives. It privileges men in matters of property, authority, and decision-making, while expecting women to conform to caregiving and domestic roles.<sup>16</sup>

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<sup>11</sup> Ajailiu Niumai, 'Intersecting Inequalities: Unravelling Gender and Social Exclusion in Contemporary Society' (2025) 27 *Journal of Social and Economic Development* S1

<sup>12</sup> Gabriele Winker and Nina Degele, 'Intersectionality as Multi-Level Analysis: Dealing with Social Inequality' (2011) 18(1) *European Journal of Women's Studies* 51

<sup>13</sup> Government of India, *Report Towards Equality on the Status of Women in India* (1974).

<sup>14</sup> Akinwumi Shari makin and Daniel Adakwu Idachaba, 'Analysis of Connectivity Between Economic Autonomy, Employment-Type and Relationship Style Within Household' (2025) *Journal of Social and Economic Development*

<sup>15</sup> Sudeshna Mukherjee, Rajendra N and Priyanka Dwivedi, 'Social Exclusion and Gender Inequality Faced by Students with Disabilities during the COVID Pandemic' (2025) *Journal of Social and Economic Development*

<sup>16</sup> Sylvia Walby, *Theorizing Patriarchy* (Basil Blackwell 1990).

Social conditioning plays a crucial role in sustaining these inequalities. From childhood, boys and girls are taught different expectations about behavior, ambition, and responsibility. Cultural stereotypes portray women as nurturing, emotional, and dependent, while men are associated with strength and leadership. These representations are not harmless; they justify unequal opportunities and limit women's aspirations.<sup>17</sup>

Economic dependency is another structural factor. When women are excluded from productive resources or confined to unpaid domestic labor, their bargaining power decreases. This economic marginalization reinforces patriarchal control and limits their access to social mobility.<sup>18</sup> Structural inequality, therefore, is not accidental but reproduced through everyday practices and institutional arrangements.

## 2.4 Why Women Need Legal Protection

Given these layered inequalities, legal protection becomes essential for women. Power imbalances between men and women often translate into violence, workplace discrimination, and domestic abuse. Statistics consistently show that women are disproportionately affected by gender-based violence, particularly those from marginalized communities.<sup>19</sup>

Workplace vulnerability further highlights the need for legal safeguards. Women frequently encounter wage gaps, harassment, and limited career progression. Those who are economically dependent within households are less likely to report abuse or assert their rights.<sup>20</sup>

Legal frameworks, therefore, serve not merely as formal guarantees but as tools to address systemic discrimination. They recognize that equality cannot be achieved by treating everyone the same; rather, it requires acknowledging and responding to intersecting disadvantages. Intersectionality thus strengthens the argument for gender-sensitive laws and policies that account for caste, class, disability, and other overlapping identities.

Thus intersectionality offers a deeper understanding of social inequality by revealing how multiple forms of discrimination interact. It challenges simplistic views of gender oppression and emphasizes the need for structural change, inclusive policies, and sustained legal protection to ensure substantive equality for all women.

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<sup>17</sup> Judith Butler, *Gender Trouble* (Routledge 1990).

<sup>18</sup> Nira Yuval-Davis, 'Situated Intersectionality, Inequality and Bordering Processes' (2014) 58 *Raisons Politiques* 91

<sup>19</sup> Ajailiu Niumai, 'Intersecting Inequalities: Unravelling Gender and Social Exclusion in Contemporary Society' (2025) 27 *Journal of Social and Economic Development* S1

<sup>20</sup> Akinwumi Sharimakin and Daniel Adakwu Idachaba, 'Analysis of Connectivity Between Economic Autonomy, Employment-Type and Relationship Style Within Household' (2025) *Journal of Social and Economic Development*

### 3-Constitutional Framework for Women's Protection in India

The Constitution of India was framed with a clear awareness of the deep inequalities that women had endured for centuries. The makers of the Constitution did not treat gender justice as a secondary concern; instead, they placed equality and dignity at the heart of the constitutional vision. Through Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties, the Constitution creates a legal foundation that both guarantees equal treatment and permits special protection for women.

#### 3.1 Equality Provisions

Article 14 lays down the basic rule of equality before the law and equal protection of the laws. This provision ensures that women stand on the same legal footing as men. It does not merely promise formal equality; it requires the State to act fairly and reasonably in all matters. Courts have repeatedly relied on Article 14 to strike down discriminatory practices, holding that arbitrary treatment based on gender violates constitutional morality.<sup>21</sup>

Article 15(1) strengthens this commitment by prohibiting discrimination on grounds of religion, race, caste, sex, or place of birth. By explicitly including “sex” as a prohibited ground, the Constitution directly addresses gender bias. At the same time, Article 15(3) recognizes that equality sometimes demands differential treatment. It authorizes the State to make special provisions for women and children. This clause forms the constitutional basis for affirmative measures such as reservations, welfare schemes, and protective labour laws.<sup>22</sup>

Article 16 extends the principle of equality into the sphere of public employment. It guarantees equal opportunity in matters relating to employment or appointment under the State. Women cannot be excluded from public offices merely because of their gender. Judicial decisions have clarified that service conditions which unfairly disadvantage women are unconstitutional.<sup>23</sup> Together, Articles 14, 15, and 16 establish that gender equality is not symbolic but enforceable.

#### 3.2 Protective and Welfare Provisions

While Fundamental Rights ensure equality, the Constitution also incorporates protective and welfare measures. Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the right to live with dignity.<sup>24</sup> For women, this has meant

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<sup>21</sup> *Air India v. Nergesh Meerza* AIR 1981 SC 1829.

<sup>22</sup> The Constitution of India 1950, art 15(3); see also G Nandhini and A Naveen, ‘Women’s Rights under the Indian Constitution – Gender Justice’ (2025) *Indian Journal of Integrated Research in Law*

<sup>23</sup> *Dharwad District PWD Employees Association v. State of Karnataka* 1990 AIR 883

<sup>24</sup> *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

recognition of protection against violence, harassment, and degrading treatment. The Court has consistently affirmed that dignity is inseparable from life under Article 21.

The Directive Principles of State Policy further reinforce this commitment. Article 39 directs the State to secure adequate means of livelihood for both men and women and to ensure equal pay for equal work. Article 42 mandates just and humane conditions of work and maternity relief, acknowledging women's reproductive role and the need for supportive labour policies. Article 46 urges the State to protect weaker sections from social injustice.<sup>25</sup> Although these principles are not directly enforceable in courts, they guide legislation and policy-making, shaping laws like the Maternity Benefit Act and the Equal Remuneration Act.<sup>26</sup>

### 3.3 Fundamental Duties

Article 51A(e), inserted by the 42nd Constitutional Amendment, places a moral obligation on every citizen to renounce practices derogatory to the dignity of women.<sup>27</sup> This provision shifts the responsibility of gender justice beyond the State and places it upon society as a whole. It reflects the understanding that legal reforms alone cannot dismantle entrenched patriarchal attitudes.

### 3.4 Judicial Interpretation and Expansion of Women's Rights

The Indian judiciary has played a transformative role in interpreting constitutional guarantees. The right to dignity under Article 21 has been central in expanding women's protections. In *Maneka Gandhi v. Union of India*, the Supreme Court broadened the meaning of personal liberty, laying the groundwork for later gender-sensitive interpretations.<sup>28</sup>

In *Vishaka v. State of Rajasthan*, the Court recognized sexual harassment at the workplace as a violation of Articles 14, 15, and 21. It framed guidelines to ensure a safe working environment for women, thereby reading the right to a safe workplace into constitutional protections.<sup>29</sup>

The judiciary has also advanced reproductive rights. In several decisions, including those interpreting Article 21, the Court has held that a woman's choice regarding pregnancy falls within her right to personal liberty and bodily autonomy.<sup>30</sup> Such rulings affirm that reproductive decisions are not merely private matters but constitutional rights linked to dignity and freedom.

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<sup>25</sup> The Constitution of India 1950, arts 39, 42 and 46; see Medha Kanetkar, 'Constitutional Provisions for Women Empowerment in India' (2025) SHRI-LEKH

<sup>26</sup> Dr Shipra Singam, 'Legislative Framework in India for the Protection of Women' (2021) Ilkogretim Online

<sup>27</sup> The Constitution of India 1950, art 51A(e).

<sup>28</sup> *Maneka Gandhi v. Union of India* (1978) 1 SCC 248

<sup>29</sup> *Vishaka v. State of Rajasthan* AIR 1997 SC 3011.

<sup>30</sup> *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1.

The constitutional framework for women's protection in India is built on a dual foundation. On one hand, it guarantees equality through Articles 14, 15, and 16. On the other, it authorizes protective discrimination and welfare measures through Articles 15(3), 39, and 42. At first glance, the coexistence of equality and special protection may appear contradictory. However, this apparent tension forms the basis of modern constitutional debate. True equality sometimes requires special safeguards to correct historical disadvantage. The Indian Constitution, therefore, does not choose between equality and protection it embraces both as complementary tools for achieving substantive gender justice.

#### 4- Judicial Pronouncements: Expanding Women's Rights

The story of women's rights in India cannot be told without examining the role of the judiciary. Over decades, the courts especially the Supreme Court have shifted from a cautious, hands-off stance in matters of personal law to a more interventionist and progressive approach. This transformation is visible in a range of decisions dealing with workplace safety, domestic violence, reproductive autonomy, and the dismantling of entrenched stereotypes. As recent scholarship notes, the Indian judiciary has gradually moved from a protectionist model to one that actively embraces gender justice as a constitutional commitment.<sup>31</sup>

##### 4.1 Recognition of Workplace Safety

One of the most significant judicial interventions came in *Vishaka v. State of Rajasthan*, where the Supreme Court formally recognized sexual harassment at the workplace as a violation of Articles 14, 15, and 21 of the Constitution.<sup>32</sup> The Court did not merely interpret existing statutes; it framed binding guidelines to protect working women, relying in part on international conventions such as CEDAW.<sup>33</sup>

By defining sexual harassment broadly covering physical contact, unwelcome advances, and hostile work environments the Court acknowledged that dignity at work is inseparable from equality. Later legislative action in the form of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, drew directly from these guidelines.

Subsequent judgments have reinforced this approach. Courts have emphasized that a safe workplace is not a matter of charity but a constitutional obligation. As observed in critical analyses of judicial trends,

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<sup>31</sup> Sarthak Aryan and Dristi Kakoty, 'A Jurisprudential Analysis: Exploring Indian Judiciary's Approach to Legal Feminism from Hands-Off to Protective and then to Progressive' (2024) RP-VBCL-19-2024

<sup>32</sup> *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

<sup>33</sup> Snehashree Pradhan and Basavdutta Kar, 'Judicial Interpretation of Women's Rights under the Indian Constitution and Personal Law: Analytical Approach' (2025) 12 TIJER

employment-related rulings increasingly treat women as equal participants in public life rather than as vulnerable dependents requiring mere sympathy.<sup>34</sup>

#### 4.2 Domestic Violence and the Right to Dignity

The judiciary has also expanded the understanding of domestic violence beyond physical assault. Through expansive readings of Article 21, courts have recognized a woman's right to live with dignity within the household. In *Danial Latifi v. Union of India*, the Supreme Court interpreted maintenance

provisions in a manner that ensured divorced Muslim women would receive fair and reasonable support, aligning personal law with constitutional guarantees.<sup>35</sup>

Similarly, judicial reasoning in cases concerning cruelty and matrimonial disputes reflects a growing sensitivity to emotional abuse and economic control. Rather than treating domestic violence as a "private matter," courts increasingly acknowledge it as a constitutional wrong. This shift signals a broader understanding: the home cannot be a zone exempt from fundamental rights.

The feminist review of landmark judgments in recent years highlights how courts have begun centering women's lived realities in their reasoning, particularly in cases involving marital rape debates, maintenance disputes, and protection orders. These decisions suggest that dignity is not abstract; it requires freedom from humiliation, coercion, and fear within intimate relationships.

#### 4.3 Reproductive Autonomy: Privacy and Bodily Integrity

Another transformative development lies in the recognition of reproductive autonomy as a constitutional right. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court affirmed that a woman's choice regarding pregnancy forms part of her personal liberty under Article 21.<sup>36</sup> The Court underscored that reproductive decisions are intimately linked to bodily integrity and privacy.

This reasoning gained further strength in the broader articulation of privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*. Although not limited to women's rights, its implications for bodily autonomy are profound. The judiciary has since relied on this principle to expand access to safe abortion services and to interpret the Medical Termination of Pregnancy Act in a manner consistent with dignity and choice.<sup>37</sup>

<sup>34</sup> Manoj Kumar and Subhash Chandra Yadav, 'Judicial Response in Protecting Women Rights in India: A Critical Study' (2021) 11 *ECONSPEAK*

<sup>35</sup> *Danial Latifi v Union of India* (2001) 7 SCC 740

<sup>36</sup> *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1

<sup>37</sup> 2017(10) SCC 1

Recent commentary has pointed out that these rulings reflect a deeper constitutional philosophy: women are not passive subjects of family or state control but autonomous individuals capable of making informed decisions about their bodies.<sup>38</sup>

#### 4.4 Progressive Judgments and the Breaking of Stereotypes

The evolution of judicial thinking is particularly visible in cases that directly confront patriarchal stereotypes. In *Joseph Shine v. Union of India*, the Supreme Court struck down the colonial adultery provision, observing that it treated women as property of their husbands.<sup>39</sup> The judgment explicitly rejected the notion that marriage erases individuality.

Likewise, in *Shayara Bano v. Union of India*, the Court invalidated instant triple talaq, marking a decisive break from earlier reluctance to engage with personal laws.<sup>40</sup> Scholars have described this as a turning point in the rise of legal feminism in India, where constitutional morality was placed above patriarchal religious practices.<sup>41</sup> Other progressive interventions such as granting women permanent commission in the armed forces and recognizing equal inheritance rights demonstrate a judicial commitment to substantive equality. Courts have repeatedly emphasized that stereotypes about women's "roles" cannot justify exclusion.

The broader academic analysis of judicial interpretation underscores this movement from formal equality to substantive gender justice.<sup>42</sup> Courts now frequently question laws that appear neutral but operate to disadvantage women in practice.

#### 4.5 Judicial Concern Over Misuse and the Need for Balance

At the same time, the judiciary has expressed concern about the misuse of certain protective laws. In cases under Section 498A of the Indian Penal Code, courts have warned against automatic arrests and emphasized the need for careful investigation. These observations reflect an effort to balance the protection of genuine victims with safeguards against false or exaggerated complaints.

However, scholars caution that such concerns must not dilute the protective intent of the law.<sup>43</sup> The challenge lies in ensuring that procedural fairness does not become a pretext for trivializing violence against

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<sup>38</sup> Snehashree Pradhan and Basavdutta Kar, 'Judicial Interpretation of Women's Rights under the Indian Constitution and Personal Law: Analytical Approach' (2025) 12 TIJER

<sup>39</sup> *Joseph Shine v Union of India* (2018) 2 SCC 189.

<sup>40</sup> *Shayara Bano v Union of India* (2017) 9 SCC 1

<sup>41</sup> Sarthak Aryan and Dristi Kakoty, 'A Jurisprudential Analysis: Exploring Indian Judiciary's Approach to Legal Feminism from Hands-Off to Protective and then to Progressive' (2024) RP-VBCL-19-2024

<sup>42</sup> Snehashree Pradhan and Basavdutta Kar, 'Judicial Interpretation of Women's Rights under the Indian Constitution and Personal Law: Analytical Approach' (2025) 12 TIJER

<sup>43</sup> Manoj Kumar and Subhash Chandra Yadav, 'Judicial Response in Protecting Women Rights in India: A Critical Study' (2021) 11 ECONSPEAK

women. The courts' task, therefore, is delicate: they must guard against misuse while reaffirming that gender-based violence is a serious constitutional concern.

Recent feminist analyses note that some 2025 judgments reveal both progress and pushback advancing autonomy in certain areas while displaying hesitation in others. This dual movement illustrates the ongoing negotiation between constitutional ideals and social realities.

The trajectory of judicial pronouncements in India reveals a gradual but unmistakable shift toward gender justice. From defining sexual harassment and recognizing domestic violence as a violation of dignity, to affirming reproductive autonomy and dismantling stereotypes embedded in personal laws, the courts have expanded the constitutional imagination.

Yet this progress is neither linear nor uncontested. Concerns about misuse, resistance from conservative quarters, and the persistent gap between law and lived reality continue to test the judiciary's resolve. Even so, the evolving jurisprudence demonstrates that the Constitution is not static. Through interpretation, the judiciary has sought to translate its promises of equality and dignity into meaningful safeguards for women shaping not only legal doctrine but the broader social landscape of rights.

## 5. Misuse of Women-Centric Laws: Myth or Reality?

The debate around the misuse of women-centric laws in India is both sensitive and complex. These laws were enacted to correct deep-rooted gender inequality and to protect women from violence, harassment, and discrimination. Statutes such as Section 498A of the Indian Penal Code, the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace Act, 2013, were framed to address real and pervasive harms.<sup>44</sup> Yet, over the years, concerns have emerged regarding their alleged misuse. The question is not whether women deserve protection they unquestionably do but whether some provisions are occasionally invoked in ways that depart from their original purpose.<sup>45</sup>

### 5.1 Nature of Alleged Misuse

The most frequently cited example relates to false dowry cases under Section 498A IPC. Originally intended to shield married women from cruelty and dowry harassment, this provision has sometimes been invoked in the course of matrimonial disputes.<sup>46</sup> Courts have acknowledged instances where extended family members were implicated without specific allegations, leading to concerns about over-

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<sup>44</sup> Ayushi Arora and Arun Kumar Singh, 'A Critical Analysis of the Misapplication of Women-Centric Laws Against Men in India' (2025) 2(6) *Advances in Consumer Research* 1907

<sup>45</sup> Akhil Kumar, 'Misuse of Women Centric Laws in India' (2022) 2(3) *Journal of Legal Research and Juridical Sciences* 1962

<sup>46</sup> *Ibid* 1963.

criminalisation. In *Arnesh Kumar v. State of Bihar*, the Supreme Court cautioned against routine arrests and emphasized the need for proper investigation before depriving an individual of liberty.<sup>47</sup>

Matrimonial litigation often becomes a battleground where allegations and counter-allegations multiply. Complaints under the Domestic Violence Act have occasionally been alleged to include exaggerated or fabricated claims, particularly during contentious divorce proceedings.<sup>48</sup> Similarly, workplace complaints under sexual harassment laws, though crucial for ensuring safe environments, have at times been portrayed in public discourse as tools for professional retaliation.

Revenge litigation is another dimension of the debate. In some reported cases, accusations have allegedly been used as leverage in property disputes or to secure financial settlements. Judicial observations in *Rajesh Sharma v. State of Bihar* reflected this concern and recommended procedural safeguards to prevent arbitrary arrests.<sup>49</sup> However, courts have consistently clarified that such instances do not dilute the necessity of protective legislation.

## 5.2 Reasons Behind Misuse

Understanding the reasons behind alleged misuse requires a careful look at social realities. Marital conflicts, often emotionally charged and prolonged, can escalate into legal battles. In situations where relationships have broken down irretrievably, parties may resort to criminal complaints as a means of gaining negotiating power.<sup>50</sup>

Property disputes and financial disagreements also play a role. In families where assets and inheritance are contested, criminal allegations may be perceived as pressure tactics. Custody battles over children further intensify hostility between spouses. The law, instead of being a forum for resolution, sometimes becomes an instrument of strategic advantage.

Legal pressure tactics are not unique to gender-specific laws; they occur across various domains of litigation. However, because women-centric laws often involve immediate arrest provisions and social stigma, their misuse if it occurs can have particularly severe consequences for the accused. At the same time, scholars caution that misuse claims should not overshadow the structural violence women continue to face.<sup>51</sup>

## 5.3 Statistical Versus Social Reality

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<sup>47</sup> *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

<sup>48</sup> Akhil Kumar, 'Misuse of Women Centric Laws in India' (2022) 2(3) *Journal of Legal Research and Juridical Sciences* 1963-64

<sup>49</sup> Niyati and Purnima Gupta, 'Misuse of Women-Centric Laws in India: An Analysis' (2023) 5(5) *Indian Journal of Law and Legal Research* 4441 .

<sup>50</sup> *Ibid*

<sup>51</sup> Ayushi Arora and Arun Kumar Singh, 'A Critical Analysis of the Misapplication of Women-Centric Laws Against Men in India' (2025) 2(6) *Advances in Consumer Research* 1908

The statistical debate adds another layer of complexity. Data from the National Crime Records Bureau has shown a significant number of acquittals in certain categories such as Section 498A<sup>52</sup>. Some interpret high acquittal rates as evidence of false complaints. Others argue that acquittals may result from poor investigation, hostile witnesses, or social pressure on victims to withdraw cases.

The under-reporting versus over-reporting debate remains unresolved. Gender-based violence is widely acknowledged to be under-reported, especially in rural areas where stigma and dependency discourage complaints. At the same time, urban discourse amplified by media and social media platforms often highlights isolated instances of misuse, creating a perception that false cases are widespread.

Media influence plays a significant role in shaping public opinion. Sensational reporting of a few high-profile false cases can generate the impression of systemic abuse of law, even when empirical studies suggest that such cases represent a minority. Urban narratives may differ sharply from rural experiences, where access to justice itself remains limited and many genuine victims never approach the courts.

#### 5.4 Impact of Misuse Allegations

Allegations of misuse have far-reaching consequences. One major impact is the delegitimization of genuine victims. When public discourse focuses excessively on false complaints, it can foster skepticism toward women who come forward with legitimate grievances. This skepticism may discourage reporting and reinforce silence around abuse.

Social backlash is another outcome. The perception that laws are “biased” can deepen resentment and reduce public faith in gender justice initiatives. In some circles, protective laws are portrayed as inherently unfair, leading to calls for dilution rather than reform. Such reactions risk weakening safeguards that remain essential for many women.

Gender polarization also intensifies. Instead of promoting equality, the debate sometimes degenerates into a contest between “men’s rights” and “women’s rights.” This binary framing overlooks the larger constitutional goal of fairness and due process for all individuals. The challenge lies not in dismantling women-centric laws but in refining their implementation.

Thus, the misuse of women-centric laws is neither a pure myth nor an all-encompassing reality. Instances of misuse have been acknowledged by courts and documented in academic discussions. At the same time, these instances must be understood in context: they do not negate the structural inequalities and violence that necessitated such laws in the first place. The path forward requires balanced reforms strong procedural safeguards to prevent wrongful prosecution, coupled with unwavering commitment to protect genuine victims. Justice, after all, demands both protection and fairness.

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<sup>52</sup> *Ibid*

## 6. The Debate: Gender Equality vs Gender Neutral Laws

The debate between gender equality and gender-neutral laws has gained renewed attention in India in recent years. At first glance, both ideas seem to pursue the same goal fairness. However, they arise from different understandings of inequality. While gender equality laws recognize historical disadvantage and attempt to correct it through protective measures, gender-neutral laws emphasize identical legal treatment regardless of gender. The tension between these two approaches reflects a deeper constitutional and social dilemma.

### 6.1 Concept of Gender Equality Laws

Gender equality laws in India are rooted in the idea of substantive equality rather than mere formal equality. Articles 14 and 15 of the Constitution guarantee equality before law and prohibit discrimination, but Article 15(3) expressly allows the State to make special provisions for women and children.<sup>53</sup> This provision forms the constitutional foundation for protective discrimination.

Protective discrimination recognizes that treating unequals equally may perpetuate injustice. For centuries, women have faced structural disadvantages within family, workplace, and society. Laws such as Section 498A IPC and the Protection of Women from Domestic Violence Act were enacted not to privilege women, but to compensate for systemic power imbalances. Scholars argue that such measures are forms of compensatory justice tools to address social realities shaped by patriarchy.<sup>54</sup>

The Supreme Court has repeatedly upheld this approach. In *Vishaka v State of Rajasthan*, the Court framed guidelines to protect women at the workplace, acknowledging that absence of gender-sensitive safeguards violates fundamental rights.<sup>55</sup> Similarly, in *Bodhisattwa Gautam v Subhra Chakraborty*, rape was described as a violation of Article 21, emphasizing the special vulnerability of women.<sup>56</sup>

Thus, gender equality laws are not neutral in language or application; they are intentionally protective. Their aim is to create a level playing field by correcting entrenched disadvantages rather than assuming that all genders begin from equal positions.

### 6.2 Concept of Gender Neutral Laws

Gender-neutral laws, in contrast, focus on equal liability and equal protection for all genders. The central idea is that crime should be defined by the act, not by the gender of the victim or perpetrator. In this framework, men, women, and transgender persons can equally be victims or offenders.

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<sup>53</sup> The Constitution of India 1950, arts 14, 15(3).

<sup>54</sup> Flavia Agnes, *Law, Justice and Gender* (Oxford University Press 2011) 95–97

<sup>55</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

<sup>56</sup> *Bodhisattwa Gautam v Subhra Chakraborty* (1996) 1 SCC 490.

The Oxford understanding of neutrality emphasizes removing gender-specific distinctions to ensure fairness in law and policy.<sup>57</sup> Gender-neutrality also aligns with the constitutional vision of equal protection under Article 14. Proponents argue that justice should be individual-centric rather than identity-centric.

The 172nd Law Commission Report recommended gender-neutral rape laws, suggesting that equality before law must apply in matters of sexual violence as well.<sup>58</sup> Although Parliament did not adopt this recommendation, the debate continues.

Judicial developments such as *NALSA v Union of India* recognized transgender persons as a “third gender,” affirming their constitutional rights.<sup>7</sup> However, existing criminal provisions still largely operate within a binary framework. Gender-neutral laws are seen as a way to include transgender and non-binary persons within the protective umbrella of criminal justice.

### 6.3 Arguments Supporting Gender Neutrality

Supporters of gender-neutral laws put forward several arguments. First, they contend that neutrality can help prevent misuse. Critics of women-centric provisions point to cases where allegations under Section 498A or workplace harassment laws were allegedly filed with mala fide intent. While courts have acknowledged isolated misuse, they have also clarified that misuse cannot justify dilution.<sup>59</sup> Nevertheless, proponents argue that neutral drafting may reduce perceptions of bias.

Second, there is increasing recognition of male victims. Research indicates that men and boys also experience sexual abuse and domestic violence but often lack adequate legal remedies due to gender-specific definitions.<sup>60</sup> Excluding them from statutory protection can amount to denial of justice.

Third, LGBTQ+ inclusion strengthens the case for neutrality. After *Navtej Singh Johar v Union of India* decriminalized consensual same-sex relations, it became evident that sexual offence laws still assume heterosexual dynamics.<sup>61</sup> Gender-neutral reforms could better accommodate diverse gender identities and sexual orientations.

Finally, changing social structures demand reconsideration. As more women enter the workforce and traditional gender roles evolve, rigid assumptions about victimhood and perpetration may not reflect

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<sup>57</sup> Vivek Kumar Gupta, ‘Men’s Rights Movement: Advocating for Equality and Justice for Gender Neutral Laws’ (2024) 4(1) *International Journal of Criminal, Common and Statutory Law* 181

<sup>58</sup> Law Commission of India, 172nd Report on Review of Rape Laws (2000)

<sup>59</sup> Jonus Issac D’Souza, ‘A Step towards Gender Neutral Laws: A Need of the Hour’ (2023) 6(2) *International Journal of Law Management & Humanities* 3278

<sup>60</sup> *Ibid*

<sup>61</sup> *Ibid*

contemporary realities. Gender-neutral laws are seen by some as a logical progression toward an inclusive legal order.

#### 6.4 Arguments Against Gender Neutrality

Despite these points, strong arguments caution against immediate adoption of complete neutrality. The most compelling concern relates to persistent patriarchy. Empirical data from the National Crime Records Bureau consistently shows disproportionately high crimes against women.<sup>62</sup> Violence against women remains systemic rather than incidental. In such a context, neutrality may obscure structural inequalities.

Secondly, unequal social power cannot be ignored. Feminist scholars argue that laws must account for social hierarchies, including intersections of caste, class, and religion.<sup>63</sup> Formal neutrality may unintentionally privilege those who already possess social power.

There is also fear of dilution of protection. The Justice Verma Committee, constituted after the 2012 Delhi assault, deliberately refrained from recommending gender-neutral rape laws, reasoning that women remain the primary victims of sexual violence in India's context.<sup>64</sup> A sudden shift to neutrality could weaken victim-centric safeguards without strengthening enforcement mechanisms.

Moreover, misuse arguments often overshadow the broader reality of under-reporting. Many women do not report violence due to stigma and economic dependency. Overemphasis on misuse risks delegitimizing genuine complaints.

The debate between gender equality and gender-neutral laws is not a simple contest between progress and conservatism. It reflects the tension between formal equality and substantive justice. While gender-neutral laws promote inclusivity and recognize evolving identities, India's deeply entrenched patriarchal structures caution against abrupt reforms.

A balanced approach appears most prudent: strengthening enforcement of women-centric protections while gradually expanding recognition for male and transgender victims. True equality cannot emerge from identical treatment alone; it requires sensitivity to social context. Until structural inequalities are meaningfully reduced, protective discrimination remains not a contradiction of equality but its necessary expression.

#### 7. Present Scenario of Women in Society

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<sup>62</sup> Riya Sharma, 'Reimagining Equality: Why India is Not Ready for Gender-Neutral Law Yet' (2024) 7(4) *Indian Journal of Law and Legal Research* 5852

<sup>63</sup> Ibid

<sup>64</sup> Justice J S Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India 2013)

The present position of women in Indian society reflects a blend of visible progress and persistent inequality. Over the past few decades, women have moved steadily into spaces that were once considered exclusively male domains. Legal reforms, educational initiatives, and policy interventions have expanded opportunities. Yet, despite these developments, the journey toward genuine social equality remains incomplete.<sup>65</sup>

One of the most encouraging trends is the steady improvement in women's education. Female literacy rates have risen significantly, and more girls are enrolling in secondary and higher education than ever before. Government schemes promoting girl-child education have contributed to narrowing the gender gap in school attendance.<sup>66</sup> Higher education institutions now witness increasing participation of women in professional courses such as law, medicine, engineering, and management. However, disparities continue, especially in rural and marginalized communities, where dropout rates among girls remain linked to poverty, early marriage, and lack of infrastructure.<sup>67</sup>

Workforce participation has also shown gradual improvement. Women are entering entrepreneurship, public administration, technology, sports, and even the armed forces.<sup>68</sup> Various government schemes have aimed at promoting financial independence and skill development. Despite this, female labour force participation in India remains comparatively low, and many women are concentrated in informal or low-paying sectors. Wage gaps and glass ceilings still limit upward mobility.<sup>69</sup> Economic empowerment, though progressing, has not yet translated into full workplace equality.

Another notable change is the increased reporting of crimes against women. Greater awareness, media exposure, and movements such as MeToo have encouraged more women to come forward with complaints of harassment and abuse.<sup>70</sup> While this rise in reporting may create the impression of increasing crime, it also indicates growing confidence in legal mechanisms. Nevertheless, implementation gaps and social stigma often discourage women from pursuing justice fully.

In the digital age, new challenges have emerged. Online harassment, cyberstalking, and image-based abuse disproportionately affect women, especially young professionals and students. The digital space, while offering opportunities for education and entrepreneurship, has also become a platform for gendered hostility. Legal frameworks exist, but enforcement and digital literacy remain areas requiring urgent attention.

The urban-rural divide continues to shape women's experiences differently. Urban women may have greater access to education, employment, and legal remedies. In contrast, rural women frequently encounter

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<sup>65</sup> Dhaval Patel, 'Indian Women Rights in Current Scenario' (2023) 8(2) *International Journal of Social Impact* 97

<sup>66</sup> *Ibid*

<sup>67</sup> *Ibid*

<sup>68</sup> Rubi Das (Chakraborty), 'Women Empowerment and Present Scenario in India' (2024) 2(12) *The Academic* 1283

<sup>69</sup> *Ibid*

<sup>70</sup> *Ibid*

layered disadvantages linked to caste, poverty, and limited infrastructure.<sup>71</sup> Even when laws guarantee equality, social practices such as dowry expectations, early marriage, and gender-based restrictions persist in several regions.

Continued vulnerability remains a defining feature of women's lived realities. Gender-based violence, domestic abuse, trafficking, and workplace harassment are still prevalent concerns.<sup>72</sup> Although the Constitution and subsequent legislation provide strong safeguards, social attitudes and patriarchal norms often undermine their effectiveness. Legal empowerment has advanced more rapidly than social transformation.

In essence, the present scenario reveals a paradox. Women today are more educated, more visible in public life, and more aware of their rights than previous generations. They are leaders, professionals, entrepreneurs, and change-makers. Yet, structural inequality, cultural resistance, and safety concerns continue to restrict complete freedom and autonomy.

Therefore, while women in India are legally empowered to an unprecedented degree, social equality remains a work in progress. True empowerment will require not only laws and policies but also a shift in collective mindset where equality is practiced within families, communities, and institutions alike.

## **8- Reform Measures and Recommendations.**

### **➤ Empowering Implementation and Accountability.**

A gap between law and practice is one of the most burning issues. India is already relatively well-equipped with the constitutional and statutory provisions on the protection of women. But the actual problem is implementation. Laws on domestic violence, harassment at the workplace, dowry and sexual offences should be applied in a consistent manner and in a very sensitive way. Gender-sensitivity training should be conducted to police officers, protection officers as well as judicial authorities in order to take complaints seriously as opposed to skepticism. The mechanisms of monitoring should also be enhanced so that there is no unnecessary delaying of cases and that victims are not pressurized to drop complaints because of social pressure or burnout. The systems of accountability must be institutionalised. In the workplaces, Internal Complaints Committees, as an example, should operate freely and openly. These bodies can be made not turn into mere formalities as a result of periodic audit and reporting requirements. Legal protection can never be taken seriously when it is paper-based thus institutional accountability should be well-established and tracked down.

### **➤ Enhancement of Intersection-Sensitive Policies.**

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<sup>71</sup> R Jaya Bharathi, 'Status of Women from Ancient to Modern Days in India' (2017) 3(1) *International Journal of Law* 36

<sup>72</sup> *Ibid*

The reforms should consider that women are not a homogeneous lot. Policies must also mirror the stratified injustices of the Dalit women, the rural women, the women who are economically dependent and the women with disabilities. Intersectional awareness should be incorporated in the targeted welfare schemes and access to legal aid. Rural women, as an example, might need mobile legal aid clinics whereas disabled women might need available reporting systems and inclusive infrastructure. The government programmes must consider the caste and class and disability point of view in framing the gender policies. It is also necessary to make data collection more subtle, which incorporates not just gender but also overlapping vulnerabilities. The policy interventions are likely to ignore the most marginalized without precise data to the detriment of the marginalized.

➤ **Structural Reform of Economic Empowerment.**

Women need to be economically independent in the long term. The skills development programmes, entrepreneurship support, and equal pay enforcement should be given priority. Women can be empowered through financial literacy campaigns to make sound economic choices and eradicate dependency in the household.

Availability of credit, awareness of property rights as well as land ownership reforms will also be important. Women are empowered in the sense that the higher is their control of resources, the higher their bargaining power at the family and the society. Economic empowerment cannot be seen as a welfare policy but should be a structural correction on historical inequality.

➤ **Legal Reforms that have Procedural Protection.**

Issues raised about the wrong use of women-focused legislations are to be handled with discretion without undermining their protectionist nature. Arbitrary arrests or malicious litigation could be avoided with proper procedural protection, fair standards of investigation and judicial control. Simultaneously, reforms should not discourage real victims with the overload of procedures. The issue of gender neutrality must be addressed in a progressive and situational manner. The inclusion of male and transgender victims will help to increase inclusivity, but the changes should not weaken the protection of women in the society when patriarchal power systems still hold deep roots. A moderate legislative policy, both protective and fair can save justice and credibility.

➤ **Social Consciousness and Cultural Intervention.**

Reform of the law is not enough to change established attitudes. Constant creation of awareness programs is necessary to break the stereotypes, make equality a norm, and deter acts like dowry or domestic violence. There is need to introduce gender-sensitivity modules in the educational curricula at an early age to redefine social conditioning. The media and digital space should also be urged to give responsible coverage to women. The solution of digital harassment is not only in the increased enforcement but also in the field of

educating people about how to behave online. Civil society groups, local leaders and the local governing institutions can have constructive role in changing social narratives.

### ➤ **Enhancing Access to Justice**

Justice should be made easy and victim oriented. Fast-track gender-based offence court, victim support, counselling service and witness protection system can lessen the secondary trauma. Legal literacy programs need to be increased especially in the rural and marginalized communities to ensure that women are aware of their constitutional rights and remedies that can be used. Free and quality legal assistance should also be enhanced and economic constraints should not deny the women access to justice. The barriers can be further minimized by language accessibility and easy-to-use complaint systems.

The Reform should go beyond mere commitment to reform substantively. The constitutional vision of India already welcomes the equality and protective discrimination. This vision now has to be operationalized by means of effective enforcement, intersection-sensitive policymaking, economic empowerment, and cultural change. Gender justice will never be realized by mere laws but through a series of actions and the general effort of the society. Empowerment has been laid on the law; social change must now follow the path.

## **9- Conclusion**

The discussion that has been carried out in the current study proves that the legal protection of women in India cannot be explained without mentioning that inequality is an intersectional phenomenon. Gender contributes to social disadvantage but it is also determined by the interplay of hierarchies of caste, class, economic dependency, geography and ability. Intersectionality acts as the reason why women needed more than official pronouncements of equality. It shows how structural barriers used to limit their own autonomy, resource, and accept different types of violence in the past. In this context, protective discrimination did not amount to any favoritism, but a constitutional reaction to established imbalance.

With time, legislative policies and judicial interventions have made women very strong. Articles 14, 15, and 21 constitutional guarantees, as well as progressive judicial interpretation, have broadened the interpretation of dignity, safety and bodily autonomy. The law towards recognizing reproductive choice, workplace harassment policies, and domestic violence protection can all be seen as demonstrating how the law has ceased symbolically to be about equality and empowerment. The developments have led to increased awareness, more reporting of abuse, and wider inclusion of women in the life of the public.

Simultaneously, the argument of abuse of women-focused laws cannot be recklessly dismissed. Courts have recognised some situations in which provisions were applied in matrimonial or personal cases in a manner that cast doubt upon procedural fairness. The fact that there is misuse however does not eliminate the need to have protective legislation. Not by making the social vulnerable weaker but by providing more protection and a more thorough inquiry should isolated abuse of law be dealt with.

The increased demand on the total gender neutrality is an indicator of the changing social parameters and inclusiveness requirements. However, the sudden change to full neutrality in a society that still operates under patriarchal principles can ignore the oppression of existing differences. Reform therefore, should be quantifiable and factual that does not undermine fairness to accused personalities but at the same time leave significant protection to the victims.

In the end, a way forward is not either of the two directions: protection or neutral but the legal system itself should be improved to accommodate the realities of the Constitution and society. The law is not to make a

choice between protection of women and fairness to the accused, but to create a justice system in which there will be empowerment and accountability.

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